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Supreme Court, U.S.
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Case No._____

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT M. DAVIDSON and
VANESSA E. KOMAR,
Petitioners
v.
JAY GROSSMAN and
EUDICE GROSSMAN,
Respondents

On Petition For Writ Of Certiorari
As To Final Judgment of the
Arizona Supreme Court

PETITION FOR WRIT OF CERTIORARI

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The Petitioners, Robert Michael Davidson and Vanessa Elaine Komar, husband and wife, respectfully pray that a writ of certiorari issue to review the final judgments of the Arizona Supreme Court. On April 20, 2006, the Petitioners were denied a relief from the highest state court from which relief could be had. The final judgments have substantially violated the public interest. The interests primarily at stake are governmental and societal. The Arizona judicial system is unwilling to reach the federal constitutionality of Arizona Rule of Civil Procedure, Rule 5.1.

ISSUES PRESENTED

Issue 1: Arizona Rule of Civil Procedure, Rule 5.1 is repugnant to U.S. Constitution.

Issue 2: The withdrawal of counsel in the state Action deprived Petitioners of federal constitutional rights.

Issue 3: Petitioners allegations stated a constitutional claim against their privately-retained attorney and his law firm.

LIST OF PARTIES

Petitioners

ROBERT M. DAVIDSON;
VANESSA E. KOMAR;

Respondents

JAY GROSSMAN;
EUDICE GROSSMAN;

TABLE OF CONTENTS

QUESTIONS PRESENTED.....i

LIST OF PARTIES.....ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

CITATIONS TO OPINIONS AND ORDERS 1

STATEMENT OF JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS 2-3

STATEMENT OF THE CASE 4-7

ARGUMENT FOR ALLOWANCE OF WRIT....7-30

Issue # 1: Arizona Rule of Civil Procedure, Rule 5.1 is repugnant to U.S. Constitution.....17-23

Issue # 2: The withdrawal of counsel in the state Action deprived Petitioners of federal constitutional rights.....23-27

Issue # 3: Petitioners allegations stated a constitutional claim against their privately-retained attorney and his law firm.....27-30

CONCLUSION AND PRAYER FOR RELIEF.....30

TABLE OF APPENDICES.....v
APPENDICES A-Z.....App. 1 - App. 75

TABLE OF AUTHORITIES

CASES

Briley v. State of Cal., 564 F.2d 849.....14

Carruth v. Geddes, 443 F. Supp. 1295.....11

CJS Judges Section 267.....13

Dennis v. Sparks, 449 U.S. 24.....15

Eaton v. Unified Sch. Distr. No. 1 of Pima County, 122 Ariz. 391, 392, 595 P.2d 183, 184 (App. 1979) 9

Hedges v. Resolution Trust Corp., 32 F.3d 1360 (1994).....17

McIlwain v. U.S., 104 S.Ct 409.....11

Minns v. Paul, 542 F.2d 899.....30

Pugliano v. Staziak, 231 F.Supp. 347.....29

Schwab v. Ames Construction, 207 Ariz. 56, 83 P.3d 56 (App. 2004).....24

Smith v. Smith, 115 Ariz. 299, 564 P.2d 1266 (Ct. App. Div. 1977).....13

State of North Carolina v. Neeley, 297 S.E.2d 389.....25

U.S. v. Sardone, 94 F.3d 1233 (1996).....17,18

Valley Nat'l Bank of Ariz. v. Meneghin, 130 Ariz. 119, 634 P.2d 570 (1981.....24,25,26

Wenc v. Sierra Vista Unified Sch. Dist. No. 210 Ariz. 183, 108 P.3d 962 (App. 2005).....24,26

Zimmerman v. Shakman, 204 Ariz. 231, 237, 62 P.3d 976, 982 (App. 2003).....25

CONSTITUTIONAL PROVISIONS AND STATUTES

Fourteenth Amendment of the U.S. Constitution...3,17, 19,22,27

Article 2, Section 4, Arizona Constitution.....3

Article VI, Section 21, Arizona Constitution.....3,15

Ariz. R. Civ. P. Rule 5.1.....2,3,5,7,8,9,10,12,13,14,15, 17,18,19,20, 21, 22, 23, 24, 26, 27, 28, 30

42 USC Section 1983.....*11,15,27*,29,30

CITATIONS TO OPINIONS AND ORDERS

1. Orders, Arizona Supreme Court on April 20, 2006
2. Order, Division II on September 8, 2005
3. Memorandum Decision, Division II Arizona Court of Appeals on August 18, 2005
4. Memorandum Decision, April 4, 2005, from Ninth Circuit U.S. Court of Appeals (03-17342)
5. Memorandum Decision, April 4, 2005, from Ninth Circuit U.S. Court of Appeals (04-15304)
6. Second Amended Judgment nunc pro tunc, March 23, 2005, in Arizona trial court
7. Amended Judgment nunc pro tunc, January 4, 2005, in Arizona trial court
8. Judgment, November 26, 2004, in Arizona trial court
9. Order, November 24, 2004, in Arizona trial court
10. Order, November 9, 2004, in Arizona trial court
11. Order, April 29, 2004, in Arizona trial court
12. Mandate, Ninth Circuit: case is dismissed as to appellees Vivra Inc, Magellan Specialty Health Inc, and Allied Specialty Care Services LLC f/k/a Allied Specialty Care Services Inc ONLY, U.S. District Court, Arizona District, Case No. CV-03-110-FRZ, Docket No. 61, on April 16, 2004
13. Order, February 2, 2004, U.S. District Court, Arizona District, Docket No. 9, Civil Case No. CV-03-00580-FRZ
14. Mandate, Division II Arizona Court of Appeals of November 26, 2003
15. Order, November 24, 2003, U.S. District Court, Arizona District, Docket No. 56, Civil Case No. CV-03-00110-FRZ
16. Order, Arizona Supreme Court re: action taken August 8, 2003 (CV-03-0148-PR)
17. Memorandum Decision, Division II Arizona Court of Appeals on February 27, 2003
18. Order, January 11, 2002, in Arizona trial court

JURISDICTION IN U.S. SUPREME COURT

This petition is filed under 28 U.S.C. §1257, 28 U.S.C. § 1651(a), 28 U.S.C. § 2101 (c), and Supreme Court Rule 12. Petitioners seek for certiorari to issue to review constitutional questions *and State Action.*

RELIEF NOT AVAILABLE FROM ANY OTHER COURT

Petitioners *lack adequate alternative means* to obtain the relief they seek and their right to the issuance of a writ of certiorari is *clear and indisputable.* Petitioners have been *denied* relief by the Arizona Supreme Court on April 20, 2006, *the highest state court from which relief could have been had.* There was no adequate state law basis for not reaching the federal questions raised in the State court proceedings. Petitioners raised the issue as to the constitutionality of Arizona Rules Civil Procedure, Rule 5.1 and State Action, on both interlocutory appeal and appeal from final judgments. *See Appendices A, B, C, P, and R.*

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. CONSTITUTION:

The Fifth Amendment of the United States Constitution provides: *"Nor shall [any person] be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation".*

The Sixth Amendment of the United States Constitution provides: *"In all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defense".*

The Fourteenth Amendment of the United States Constitution provides: *"No state shall deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws".*

Article I, Section 10 (1) of the United States Constitution provides: *"No State... shall pass any... Law impairing the Obligation of Contracts".*

ARIZONA CONSTITUTION:

Article 2, Section 4, states, *"No person shall be deprived of life, liberty, or property without due process of law."*

Article VI, Section 21, states, *"Every matter submitted to a judge of the superior court for his decision shall be decided within sixty days from the date of submission thereof."*

ARIZONA RULES OF CIVIL PROCEDURE:

Ariz. R. Civ. P. 5.1: (see Appendix Z)
Ariz. R. Civ. P. 60 (c)(4): "On motion and upon such terms as are just the court may relieve a party or a party's legal representative from a final judgment, order or proceeding for the following reasons: ...(4) the judgment is void; ..."
Ariz. R. Civ. P. 60 (c)(6): "...any other reason justifying relief from the operation of the judgment."

RULES OF THE ARIZONA SUPREME COURT:

Rule 91(e): "Every matter submitted for determination to a judge of the superior court for decision shall be determined and a ruling made not later than sixty days from submission thereof, in accordance with Section 21, Article VI of the Arizona Constitution."

STATEMENT OF THE CASE

The filing of the State court proceeding (a defamation action) in an Arizona trial court in July of 1999, was a conscious attempt by the State court plaintiffs (Jay Grossman and Eudice Grossman) to avoid the very real possibility of a federal court ever reaching the issues surrounding their conduct in interstate commerce over the last two decades, in both Albany, NY and Tucson, AZ. Their "*attack the messenger*" strategy in this "*whistle blower*" action has been extraordinarily successful. In Arizona, the State court plaintiffs (Jay Grossman and Eudice Grossman) have triumphed in the midst of alleged adversity. For alleged "*losses*" in connection with the sale of Grossman's medical practice and the stock purchase and sale of Vivra stock, Grossman has been awarded damages against the Davidsons. By reason of Grossmans' violations of the substantive federal RICO statute, 18 U.S.C. § 1962(b), Grossmans have been awarded damages against Davidsons in a default judgment in the State court proceeding. *See Appendices F, G, H, and HH.* By reason of the concerted acts of the State Actors in the State Action, Davidsons have suffered *actual damages* and deprivation of constitutionally-protected fundamental rights.

The nucleus of operative fact upon which this case is based, centers primarily around the federal court defendants' (Jay Grossman, Eudice Grossman, *and others*) conduct in both Arizona and New York performing clinical research studies on behalf of various pharmaceutical corporate sponsors in support of New Drug Applications. The defendants in the Federal court proceedings have by the very nature of their business (contract clinical research and specialty medical practice) willfully injected themselves, their

business, and their conduct, into the stream of interstate commerce.

This is still a very "*live*" case and controversy.[1] Now that the Arizona Supreme Court has *finally* ruled, there are no "*ongoing state court proceedings*" to bar filing a federal RICO complaint. Davidsons' federal RICO claims have never been litigated. Davidsons request this Court to judicially notice the Supplemental Brief and Petition for Rehearing in U.S. Supreme Court Case No. 04-1687, as they are both material to issues (*mandatory* disqualification and state action) raised in the Petitions presently before this Court.

The "*final judgment*" in the State Court proceeding was a default judgment by a trial judge who failed to disqualify herself *on numerous occasions* under *mandatory* disqualification statutes of the Arizona Code of Judicial Conduct. The default judgment struck Davidsons' counterclaims (assault and battery *in the workplace*), granted Grossmans alleged damages of $7.8 million for alleged defamation and IIED, and entered sanctions against Davidsons, all without ever reaching the merits of the case or Davidsons' constitutional concerns regarding Ariz. R. Civ. P. Rule 5.1 and the Prescription Drug User Fee Act. It is quite clear from the record that both the State trial judge, Jane L. Eikleberry (referred to herein as "JLE") and the Federal District Court judge, Frank R. Zapata (referred to herein as "FRZ") violated *mandatory* disqualification statutes.

Michael J. Meehan (referred to herein as "MJM") was believed to have been an honorable, well-respected, practitioner of law in Tucson, Arizona when Davidsons retained MJM as their legal counsel on October 13, 1999. Davidsons did not anticipate that MJM would

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[1]Davidsons were actually prevented from filing their federal Complaint with the U.S. District Court for Northern District of Texas (Case No. 3:06-CV-0920-M) until the Arizona Supreme Court ruled, so as to avoid *a second* dismissal under *Younger* abstention.

abandon and slander his clients to achieve his judicial ambitions. *See Appendices Q through Z.*

The fact that the entire Arizona judicial system is seemingly in "*lock step*" on this matter should not deter this Court. This is an extraordinary case, imminently suitable for this Court's exercise of certiorari. Petitioners have been denied a legal remedy by the Arizona judicial system for seven years due to "*structural errors*" in the State court proceedings which were no fault of the Petitioners.

Abbreviated Relevant Procedural History

Davidsons filed Emergency Motion to Stay the Proceedings on September 22, 2004, and Objection to Motion for Entry of Default and Sanctions on September 29, 2004. *Without jurisdiction to act* (in clear absence of all jurisdiction), the State trial court entered default (and sanctions) in Order of November 9, 2004, and "final" Judgment on November 26, 2004. Davidsons timely-filed Notice of Appeal with the trial court on December 8, 2004. *Without jurisdiction to act and without permission from Division II (Division II had jurisdiction, not the trial court),* Amended Judgment (nunc pro tunc) was entered on January 4, 2005, and Second Amended Judgment (nunc pro tunc) was entered by the trial court on March 23, 2005.

Davidsons filed "*Appellants' Expedited Motions: 1. Motion to include Second Amended Judgment (Nunc Pro Tunc) in record on appeal and 2. Motion for relief from "final" judgments under Ariz. R. Civ. P. 60(C)(6)*" with Division II on April 11, 2005. On April 27, 2005, Division II *denied* Appellants' Expedited Motion for Relief from Final Judgments under Ariz. R. Civ. P. 60(c)(6). Davidsons filed their *initial* "*Appellants' Motion to Reconsider*" with Division II on May 4, 2005. Division II *denied initial* Appellants' Motion to Reconsider on May 10, 2005.

On August 18, 2005, the Memorandum Decision of Division II *affirmed* the rulings and judgments of the trial court. Davidsons filed their *second "Appellants' Motion to Reconsider" with affidavit and exhibits,* on August 30, 2005, with Division II. Division II *denied second* Appellants' Motion to Reconsider on September 8, 2005.[2] Petition for Review by Arizona Supreme Court *with affidavit and appendices,* was timely-filed on September 21, 2005, with Division II.

On April 20, 2006, *almost seven months after Davidsons initially filed their Petition for Review,* the Arizona Supreme Court *denied* Petition for Review, *denied* Motion to Expedite Petition for Review, *denied* Motion to Vacate Final Judgments under Rule 60(c)(4), and *denied* Renewed Motion to Expedite Petition for Review.

WRIT TO REVIEW CONSTITUTIONAL QUESTIONS AND STATE ACTION

Standard of Review

Both substantive and procedural due process (and equal protection) violations under the 14th Amendment have been alleged in the State court proceedings, which warrant *de novo* review. There should be no presumptions of "*good cause*". Davidsons have alleged profound "*structural error*" in the constitution of the state court proceedings, which warrants *immediate reversal.* Ariz. R. Civ. P. Rule 5.1 provided encouragement by the State of Arizona for the State Actors (MJM, Q&BSL, Bruce R. Heurlin, Jane L. Eikleberry, Jay Grossman, and Eudice Grossman),

[2]There were two entirely separate and distinct filings captioned "*Appellants' Motion to Reconsider*", filed on May 4, 2005, and on August 30, 2005, *both of which were denied by Division II,* on May 11, 2005, and on September 8, 2005, respectively.

acting by agreement and in concert, to willfully and maliciously deprive Davidsons of their retained legal counsel in the State court proceedings. Attorney withdrawal *drastically* prejudiced Davidsons' cause of action. Predicate facts disclosed *disqualifying extrajudicial knowledge* by the State Actors. *See the Petition for Writ of Mandamus which accompanies this filing.*

There exist a class of constitutional errors that "*necessarily render a trial fundamentally unfair*" and these are not amenable to harmless error analysis. Harmless error analysis "*presupposes a trial, at which the defendant, represented by counsel, may present evidence and argument before an impartial judge and jury*". Withdrawal of counsel and *repeated* failures to comply with *mandatory* disqualification statutes are constitutional errors which rendered the State court proceedings fundamentally unfair and deprived Davidsons of the "*basic trial process*".

Constitutional Due Process and Equal Protection Deprivation under the 14th Amendment

Arizona Rules of Civil Procedure, Rule 5.1, is repugnant to the U.S. Constitution. Petitioners have sustained actual [readily- quantifiable] damages by reason of State Action under color of Rule 5.1. This Court should review the federal constitutionality of Arizona Rules of Civil Procedure, Rule 5.1 under the de novo standard of review and declare it to be facially unconstitutional and unconstitutional as applied to Davidsons in the State Action. Petitioners have been deprived of fundamental rights to due process and equal protection, and fundamental right to the *presently-enjoyed* benefit (liberty and property interest) of retained legal counsel, *by invidiously discriminatory applications of the Arizona Rules of Civil Procedure*

Rule 5.1 to Davidsons, by the *concerted action* of the State Actors, in the State Action. *A lawyer and law firm who maliciously abandon and slander their clients, for personal political and financial gain, under color of law, acting in concert with the trial judge and opposing legal counsel represents an exception to the doctrine of judicial immunity.* See Appendices Q through Z.

The State trial judge (JLE) was named as a State Actor in both of Davidsons' Petitions for Writ of Certiorari. Davidsons request this Court to judicially notice U.S. Supreme Court docket # 04-537, filed on September 17, 2004, and U.S. Supreme Court docket # 04-1687, filed on June 13, 2005. See pages 2 and 6 of Davidsons' Reply Brief in 2 CA-CV 2002-0051 to Division II. See page 30 (Issue #4) of Davidsons' Petition for Writ of Certiorari before Judgment (U.S. Supreme Court docket # 04-537).

See the Memorandum Decision of Division II in 2CA-CV 2002-0051 (Appendix R, ¶ 4 at App. 57) where it states,

> *"Although we might agree that the rights to which Davidson refers are substantial, we cannot agree that the trial court's order permitting his counsel to withdraw determined the action that the Grossmans filed against him. That "order did not finally dispose of the case, leaving no question open for judicial determination." Eaton v. Unified Sch. Distr. No. 1 of Pima County, 122 Ariz. 391, 392, 595 P.2d 183, 184 (App. 1979). The order simply allowed Davidson's attorney to withdraw his representation and continued the date for a trial on the merits."*

Davidsons submitted (*pro se*) a Notice of Appeal (*see Appendices VV-VVVV*) from the trial court's Order

of January 11, 2002, on February 11, 2002, from East Texas, after having relocated *about 1200 miles*, to take new employment. Contrary to the impression given by Judge Brammer at App. 7-9, ¶ 10-12, of Appendix C, Davidsons never waived their right to appeal the Motion to Withdraw as Counsel of Record and the Order granting withdrawal, either expressly or by their conduct. Waiver is one of the reasons given by Division II for not reaching the constitutionality of Arizona Rule 5.1 and for not reaching the issue of State Action. *See Petition for Review to Arizona Supreme Court at pages 4 through 6, which specifically address the question of waiver.*

Judge Brammer is quite correct in his footnote 7 at App. 9 of the Memorandum Decision, where he states, *"The Davidsons also contend Meehan, his law firm, the Grossmans, and the trial judge 'conspired with each other, as State Actors,' to deprive them of their constitutionally-protected property interest in retained legal counsel."* However, Judge Brammer is quite incorrect where he states, *"Because this contention is unsupported by any legal authority, we do not address it."*

The aforementioned false assertion (alleged lack of authoritative legal support) by Division II is one of the reasons given by Division II for not reaching the constitutionality of Arizona Rule 5.1 and the issue of State Action. Both of these issues were properly raised before Division II in 2CA-CV 2005-0011. Davidsons refer this Court to the issues raised in Opening Brief and Reply Brief to Division II and to Appellants' Motion to Reconsider on August 30, 2005. *Division II's allegation of waiver (at App. 8 and App. 9) and false assertion of lack of legal authority (at footnote 7, App. 9) are the sole bases given for not reaching the federal questions raised by Davidsons in the State court proceedings. There is no adequate state law basis for not*

reaching the federal questions raised by Davidsons in the State court proceedings.

See page 14 of the Reply Brief to Division II, where it states, "*Liability may attach to MJM and QBSL and the Trial Judge under 42 USC § 1983, 42 USC § 1985, and 42 USC § 1988, because the acts complained of were done outside the scope of their duty. See Carruth v. Geddes, 443 F.Supp. 1295.*" Davidsons cited 42 U.S.C. § 1983 and § 1985, on numerous occasions on Appeal to Division II. *See Issues #1, 2, and 3 of the Opening Brief to Division II in 2CA-CV 2005-0011. This Court is especially referred to Issues #1 and #2 of the Reply Brief where twelve authorities and statutes are cited, including 42 U.S.C. § 1983, § 1985, § 1988, and the Due Process clause of the 14th Amendment.*

The arguments put forward by Judge Brammer in ¶ 18-22, App. 12-14 of Appendix C, are *all based on an abuse of discretion standard of review.* Davidsons did not learn of the disqualifying predicate facts until August 2005. *The State Actors, however, knew of the disqualifying facts (extrajudicial personal knowledge), for more than four years.* Davidsons immediately brought the disqualifying facts to the attention of Division II in Appellants' Motion to Reconsider on August 30, 2005, *with affidavit and exhibits. See Appendices Q through Z. It is unconscionable for Division II and Arizona Supreme Court to deny the reality of their disqualifying extrajudicial knowledge.* Davidsons have overcome the presumption of impartiality of the State court adjudicators by demonstrating the existence of circumstances indicating a probability of bias too high to be constitutionally tolerable. See *McIlwain v. U.S., 104 S.Ct. 409.*

Judge Brammer's argument at ¶ 22 and ¶ 23 of Appendix C (App. 14 and 15) is *totally bogus. The trial*

court entered default and sanctions against Davidsons because of her direct personal interest which could have been substantially affected by the proceeding. The arguments put forward by Division II in ¶ 24 are completely self-serving, argued in bad faith, and warrant sanctions by this Court. Please see ¶ 26 at App. 16, where it states, "*We reject the Davidsons' assertion of bias.*" Division II has been disqualified for more than four years. *The extrajudicial prejudice which infected the State court proceedings has had a "very long time to work its evil".* A reasonable person, *knowing all the facts*, would have reasons to seriously doubt the impartiality of Division II.

Of course, Judge Brammer makes no mention of the great prejudice to Davidsons in failing to disqualify themselves and the great prejudice to Davidsons in the motion to withdraw as counsel and the coerced dismissal of Davidsons' retained counsel of record *by fiat of the trial court.* Nor does Arizona Supreme Court provide any explanation for their *inexcusable seven month delay in ruling* on Davidsons' Petition for Review.

Arizona's procedural rules are not a sufficient basis upon which to deny review, either on interlocutory appeal or on appeal from final judgment, of Davidsons' constitutional issues in the State court proceedings. See paragraph 3, page 4, and paragraphs 1-3, page 6, of Petition for Review to Arizona Supreme Court. The Order of January 11, 2002, was the Order appealed from on interlocutory appeal to Division II (2CA-CV 2002-0051) and passed on by Division II in the Memorandum Decision of February 27, 2003. *See Appendix R.* While Division II "*might agree*" that *fundamental rights* were involved, they alleged that state procedural rules precluded their needing to reach the constitutionality of Arizona Rule 5.1.

In retrospect, it is quite foreseeable that the State Actors (including Division II Judge J. William Brammer) would be unable to judge themselves fairly. "*A person cannot be a judge of his or her own cause.*" See *Smith v. Smith*, 115 Ariz. 299. This is both a matter of *public policy* and a matter of law.

Loss of Subject Matter Jurisdiction and Mootness

Subject matter jurisdiction by the trial court, Division II, and Arizona Supreme Court was lost *as a matter of law* by violation of mandatory disqualification statutes by the trial judge and certain named appellate Judges. Statutes disqualifying judges on the ground of interest are absolute, mandatory, and jurisdictional. They will be liberally construed. It is beyond the scope of legislative authority to confer on a party to a controversy or one interested therein, the power to act as judge in such cause. See *C.J.S. Judges Section 267.*

If this Court holds that the trial judge's Order of January 11, 2002, is void, Davidsons have still sustained legally-cognizable constitutional injury under color of Arizona Rule 5.1 (see Appendix Z) because of the immediate injury to Davidsons in the "gap interval" caused by the Motion to Withdraw. Davidsons' assertion that Ariz. R. Civ. P. Rule 5.1 is repugnant to the U.S. Constitution (both on its face and as applied to Davidsons) is, therefore, not made moot by the trial judge's failure to disqualify herself.

EXCEPTIONAL CIRCUMSTANCES WARRANT EXERCISE OF COURT'S DISCRETIONARY POWERS

Petitioners have a *clear right to the requested declaratory relief,* Respondents had a clear *nondiscretionary* duty to act, and no other adequate remedy is available to the Petitioners. Grossmans and their retained counsel of record (Bruce R. Heurlin) were State Actors in the State Action. So too was the State trial judge (JLE). *"There are actions of purported judicial character that a judge, even when exercising general jurisdiction, is not empowered to take."* See *Briley v. State of Cal.,* 564 F.2d 849. In over seven years, the State court proceedings have failed to reach the federal constitutional questions and the issue of State Action raised by the Petitioners. *Certiorari should issue so as to aid the Court's appellate jurisdiction.*

There is manifest and urgent necessity for certiorari to issue. The harms made possible by State Action under color of Arizona Rules of Civil Procedure Rule 5.1 are *capable of repetition, yet evade review.* Davidsons are not victims of double jeopardy in the State Action, rather, they are victims of *continuous jeopardy*. Davidsons are victims of an *ongoing* constitutional tort, from which the only hope of relief lies with this Court. The "*final judgments*" have caused *actual damages* to the Petitioners. It is readily foreseeable that a final judgment for $7,849,031.27 plus interest at 10% per annum would cause economic devastation. This default judgment leaves no doubt that attorney withdrawal prejudiced Davidsons' cause of action.

Petitioners seek a legal remedy from this Court for the egregious U.S. Constitutional Due Process deprivation in the State court proceeding which resulted in this judgment. These "*final judgments*" have substantially violated the public interest. *Petitioners request that this Court judicially notice the Petition for Writ of Mandamus which accompanies this filing.*

Davidsons request that this Court judicially notice that Canon 3(B)(8) of the Arizona Code of Judicial Conduct, states, "*A judge shall dispose of all judicial matters promptly, efficiently, and fairly.*" Davidsons request that this Court judicially notice Rule 91(e) of the Rules of the Arizona Supreme Court and Article VI, Section 21 of the Arizona Constitution. *See page 3 of this Petition.* It is unconscionable that Division II and the Arizona Supreme Court simply sat on Davidsons' Petition for Review *for nearly seven months* without a final ruling. This unreasonable delay in making their final ruling deprived Davidsons of due process. There is no justifiable reason for such a delay. By reason of this delay, the Arizona Supreme Court has caused direct injury to Davidsons' business and property. Malice by the Arizona Supreme Court towards Davidsons can be inferred.

Davidsons have made a strong showing that their rights were prejudicially affected by the unreasonably delayed "*final judgments*" of the Arizona Supreme Court and that there was a willful, malicious, withholding from the court of matters which should have been properly before it, which prevented Davidsons from having a *timely* opportunity to appeal from "*final judgments*" of the Arizona Supreme Court to the U.S. Supreme Court.

The State Actors knew *only too well* that a lawyer and law firm who maliciously abandon and slander their clients, *for personal political and financial gain*, under color of law, *acting in concert with the trial judge* and opposing legal counsel, represents an exception to the doctrine of judicial immunity. Private parties who corruptly conspire with a judge in connection with an official judicial act are acting "*under color of*" state law within the meaning of 42 U.S.C. § 1983. See *Dennis v. Sparks*, 449 U.S. 24. Arizona Rule 5.1 provided encouragement from the State of Arizona for the most

egregious conduct by MJM, QBSL, the trial judge (JLE), and opposing legal counsel (Bruce R. Heurlin).

The State trial judge (JLE) had personal, extrajudicially acquired, knowledge of disputed evidentiary facts concerning the proceedings, that is, she had *actual knowledge* that there was not "*good cause appearing therefore*" upon which to base her Order of January 11, 2002. So too did certain named Division II Judges and Arizona Supreme Court Justices have personal, extrajudicially acquired knowledge of disputed evidentiary facts concerning Davidsons' attorney, that is, they had *actual knowledge* that MJM's and QBSL's Motion to Withdraw was in no way motivated by "*good cause*". To the contrary, *the trial judge and named Division II Judges and Supreme Court Justices, had personal, extrajudicially-acquired knowledge that the Motion to Withdraw as Counsel of Record was a willful, malicious violation of Davidsons' civil rights, motivated by bad faith (evil intent), an improper motive (personal political and financial gain), and with deliberate reckless indifference to the federally-protected rights of Davidsons.*

Davidsons' Petition for Writ of Certiorari before Judgment (U.S. Supreme Court docket # 04-537) at page 29 states,

> *"By information and belief, Q&BSL and MJM knew the substance and content of the "Prosecution Memorandum" before they filed their Motion to Withdraw as counsel of record in the State court proceeding. Yet, Q&BSL and MJM agreed [with each other] to continue to refuse to bring Arizona fraud, Arizona RICO, and federal RICO actions, on behalf of their then clients, the Davidsons, despite repeated requests by the Davidsons to bring such actions."*

Davidsons did not realize at the time that the object of the aforementioned repeated refusals to bring fraud and racketeering actions on behalf of their clients, and the object of their Motion to Withdraw, was not solely to permanently deprive Davidsons of a legal remedy for the injuries wrought upon them by Grossmans and others acting in concert, and avoid their contractual and professional responsibility to Davidsons, just four months before the scheduled trial date, but was also intended to conceal the racketeering conspiracy which had been ongoing for nearly two decades, in both New York and Arizona, and facilitate MJM's candidacy for anticipated vacancies in the Arizona Supreme Court and Arizona Court of Appeals (Division II).

ARGUMENT

Issue 1: Arizona Rules of Civil Procedure, Rule 5.1 is repugnant to U.S. Constitution.

Withdrawal of counsel in the State Action deprived Davidsons of their right to due process, equal protection, right to contract, and right to freedom from arbitrary takings, secured by the Fifth, Sixth, and Fourteenth Amendments, and Article I, Section 10 (1). Davidsons were denied federal constitutional rights by State Action under color of Arizona Rule 5.1 in the State court proceeding. A series of recent 9th Circuit appellate cases, which base their holdings upon *U.S. v. Sardone*, 94 F.3d 1233 (1996) citing *Hedges v. Resolution Trust Corp.*, 32 F.3d 1360 (1994), hold that "*there is generally no constitutional right to counsel in civil cases.*" The "*final judgments*" in the State court proceedings draw into question the Constitutionality of Arizona Rules of Civil Procedure Rule 5.1. The risk of an erroneous deprivation

by the State action in the state court proceeding is substantial.

The Trial Judge[3] (FRZ) in the federal court proceeding [CV-03-00580-FRZ] erred when he cites *U.S. v. Sardone,* as authority for his view that *"there is generally no constitutional right to counsel in civil cases." See Appendices L, N, and O.* He fails to distinguish between the right to appointed counsel and the right to retained counsel. The federal constitutional right to retained legal counsel in an ongoing civil proceeding was not a prospective property interest. It was a presently-enjoyed property interest once Davidsons entered into a retainer agreement with Michael J. Meehan.

Davidsons were deprived of the presently-enjoyed benefit of retained counsel in an ongoing civil proceeding without procedural due process. The process that was due is, *at minimum,* a hearing. There was no such hearing afforded Davidsons. The opposing legal counsel (MJM, QBSL, and Bruce Heurlin) simply *agreed between themselves and with the Court* under color of Arizona Rule 5.1, and there was State Action. To say that there is generally no constitutional right to retained counsel in civil cases is a statement of such broad scope and sweep that it would undermine many, if not all, of the basic foundations upon which our legal system rests. The right to retained legal counsel is a basic personal right which requires that courts exercise special solicitude under the heightened (strict) scrutiny standard of review.

Davidsons' complaint against MJM and QBSL in the federal court proceedings was based [in part] on *whether the State has power to disenfranchise litigants from presently-enjoyed benefit of retained legal representation in an ongoing civil proceeding, without due process and equal*

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[3]FRZ had a *non-discretionary* duty to disqualify himself under 28 U.S.C. § 455(b)(1) in *both* federal court proceedings [CV-03-00580-FRZ and CV-03-00110-FRZ].

protection guaranteed under the Fourteenth Amendment. Davidsons' property interest in their retained legal representation was a presently-enjoyed property interest at the time of the Trial Judge's Order granting attorney withdrawal. Davidsons have a legitimate claim to entitlement to their retained legal representation in a civil proceeding. There was nothing permissive about the Trial Judge's Order. The Order was arbitrary and capricious. There was no hearing or certification process afforded to Davidsons.

Davidsons did not *voluntarily* elect to proceed *pro se.* They were forced by State Action to proceed *pro se.* Davidsons did not *voluntarily* elect to be deprived of their retained counsel of record. Granting an attorney the right to withdraw *without the clients' consent* interferes with civil litigants' Constitutional rights. The right to enjoy property without unlawful deprivation is a personal right. There is no real dichotomy between personal liberties and property rights. The right to the presently-enjoyed benefit of retained legal representation in an ongoing civil proceeding is a basic civil right. Arizona Rule 5.1 places a meaningful burden on a fundamental personal right. *Davidsons' challenge to the federal Constitutionality of Arizona Rule 5.1 rests on procedural and substantive due process grounds, equal protection grounds, takings clause grounds, and right to contract grounds.*

The issue before this Court is not whether Davidsons had the *opportunity* to retain new legal counsel after the Trial Judge's Order of January 11, 2002. The issue before this Court is whether: (a) QBSL's and MJM's Motion to Withdraw (*after the action had been set for trial*), (b) Grossmans' Nonobjection to Attorney Withdrawal, and (c) the Trial Judge's Order for Attorney Withdrawal (under Arizona Rule 5.1), provided Davidsons with the guarantees of due process, equal protection, right to contract, and freedom from arbitrary Takings.

MJM's and QBSL's contractual and professional duty to Davidsons did not end with their Motion to Withdraw as counsel of record on December 18, 2001, just four months before the scheduled trial date. There was no communication by MJM and QBSL to Davidsons of their intent to withdraw as counsel of record, prior to filing the Motion to Withdraw as counsel of record. MJM and QBSL were never given permission by Davidsons to withdraw. There was no endorsement upon the Motion to Withdraw, either by signature of substituting attorney or by signature of the clients. There was no hearing afforded to Davidsons as to the Motion to Withdraw, either pre- or post-deprivation. While Grossmans were parties in interest to the Motion to Withdraw, Davidsons were the real parties in interest to the Motion to Withdraw.

It is *oxymoronic* for the State court trial judge to base the ruling of January 11, 2002, on the fact that Davidsons did not file an objection to the Motion to Withdraw. This ruling presumes that Davidsons had no objection to their legal counsel's withdrawal, which is simply *not true*. The trial judge's seriously flawed reasoning also presumes that Davidsons suddenly acquired an obligation to retain *new* legal counsel, or else appear in the trial court *pro se*, simply because of the Motion to Withdraw. If an objective observer follows this flawed reasoning to its logical conclusion, an attorney's contractual and professional responsibility to act in their client's behalf as their retained legal counsel in *any* State court proceeding, can be immediately shifted from attorney to client, without the clients' written endorsement, simply by filing a Motion to Withdraw, even after the action is set for trial, under color of Arizona Rule 5.1.

It is an *oxymoron* to say that Davidsons failed to object to the Motion to Withdraw, during the interval of time (*"the gap period"*) between the Motion to Withdraw and the Order granting attorney withdrawal. As their retained legal counsel in the State court proceeding, MJM

and QBSL were still under contractual and professional duty to Davidsons *during the gap period*. With their Motion to Withdraw, MJM and QBSL ceased providing Davidsons with legal representation (effective or otherwise), under color of Arizona Rule 5.1.

Arizona Rule 5.1 subrogates client's rights to those of their attorney's, based upon a conclusive presumption of the trial judge. It creates a constitutionally-impermissible unequal classification of clients and attorneys. It provides *none* of the citizens of the State of Arizona with constitutionally-guaranteed protections of presently-enjoyed property and liberty interests in their retained legal counsel.

Every Arizona citizen is vulnerable to the same federal constitutional deprivation, because clause (ii) of Ariz. R. Civ. P. Rule 5.1 (A)(2)(C) is written as a *disjunctive condition*, that is it reads, [in pertinent part], "*..., or (ii) unless the court is satisfied for good cause shown that the attorney should be permitted to withdraw.*" This statutory construction renders Ariz. R. Civ. P. Rule 5.1 to be "*flagrantly and patently*" violative of express Constitutional protections. There is no hearing or certification process afforded to clients to protect client's rights. There is no protection against the risk of error by the state. The consequence of error is substantial.

The enactment, application, and statewide enforcement of Arizona Rule 5.1 represents purposeful and invidious discrimination by the Arizona court system in favor of attorney's rights over client's rights. There is a causal link between Davidsons' injury and the State's action sufficient to support standing under Article III. Amongst the violations alleged in Davidsons' Complaint against MJM and QBSL is an unconstitutional deprivation of property [and liberty, equal protection, right to contract, and right to freedom from Takings]. The State has exercised "*coercive power*" or provided such significant encouragement that "*the choice must in law be*

deemed to be that of the State". Davidsons had a protectable, presently-enjoyed, property interest in their retained legal representation in the State court proceeding. The State actors deprived them of this property interest without procedural fairness. Davidsons assert that having an attorney under retainer for more than two years [*until four months before the scheduled trial date*], heightens their interest in receiving procedural safeguards to ensure that constitutionally-protected, presently-enjoyed, rights of liberty and property are not arbitrarily terminated by State action.

Davidsons were entitled to the expectancy that their presently enjoyed liberty and property rights would not be arbitrarily terminated by the Trial Court in the State court proceeding. Davidsons were arbitrarily and impermissibly denied an opportunity to challenge the Trial Court's Order of January 11, 2002, in violation of the procedural due process (fundamental fairness) guarantee under the Fourteenth Amendment. The Trial Court in the State court proceeding summarily absolved MJM and QBSL of their contractual and professional responsibility to their clients [Davidsons] at the precise moment of their clients' greatest need, i.e., just before trial, under Arizona Rule 5.1.

Under the 3 prongs of the Eldridge case, the private interest in their property interest in retained counsel is weighty, the procedure devised by the State [procedure by means of a hearing or certification by client is non-existent under Rule 5.1] is fraught with risks of error, and the countervailing governmental interest [solely pecuniary] is insubstantial.

In the case at bar, the State's aim is not simply to influence the attorney-client relationship, but to extinguish it. A termination of client's rights is both total and irrevocable. This forced dissolution of the attorney-client relationship should be recognized as a punitive sanction by courts. Termination of client rights by the

State is a "*unique kind of deprivation*". The State's [Trial Judge's Order of January 11, 2002] action under color of Rule 5.1, "*completely and permanently terminated all rights and obligations*" between attorney and client.

The Trial Court conclusively presumed that certain facts existed which permitted it to categorize Davidsons into a class (clients), and thereby subject them to burdens not visited upon others (attorneys), in violation of the due process and equal protection guarantee under the 14th Amendment. The Trial Court's ruling (Order of January 11, 2002) effectively subrogated Davidsons' rights to those of their attorney's (QBSL's) by "*classifying*" QBSL's statements as truthful without proof, without providing Davidsons an opportunity to challenge the truthfulness of QBSL's statements. The State Court system of Arizona created a constitutionally-impermissible unequal "*classification*" of clients *vis a vis* their attorneys, when Arizona Rule 5.1 was enacted.

Davidsons have not only established that Arizona Rule 5.1 and the state action complained of had a disproportionate or discriminatory impact, but also that the action was taken with intent to discriminate, *so as to permanently deny their clients a legal remedy for the crimes alleged in the federal court proceedings, avoid their contractual and professional responsibility to their clients, just four months before the scheduled trial date, conceal the racketeering conspiracy which had been ongoing for nearly two decades, in both New York and Arizona, and facilitate MJM's candidacy for anticipated vacancies in the Arizona Supreme Court and Arizona Court of Appeals (Division II).*

Issue 2: The withdrawal of counsel in the state Action deprived Petitioners of federal constitutional rights.

Davidsons have sustained legally-cognizable constitutional injury under color of Arizona Rule 5.1, *in substantial part*, because of the *immediate* injury to

Davidsons in the "*gap interval*" caused by the Motion to Withdraw. MJM and QBSL clothed their Motion to Withdraw with the authority of State law (Arizona Rules of Civil Procedure Rule 5.1). Arizona Rule 5.1 provided encouragement by the State of Arizona to MJM and QBSL, for them to abandon their clients, just four months before the scheduled trial date. Arizona Rule 5.1 enabled MJM and QBSL to *immediately* shift their contractual and professional responsibility to act in their client's behalf as their retained legal counsel, from attorney to client, without the client's written endorsement and without a hearing, simply by filing a Motion to Withdraw, even after the action is set for trial.

At no time did Davidsons have a duty to retain new legal counsel or, in the alternative, to appear *pro se* in the state court proceeding. Davidsons did not terminate the attorney-client relationship with MJM and QBSL, either expressly or by their conduct. Davidsons' conduct at no time demonstrated "*an unmistakable purpose to severe the attorney-client relationship*" with MJM and QBSL. See Davidsons' Opening Brief to Division II at page 16, lines 5-19, and page 17, lines 4-12.

At App. 8 of Appendix C (Memorandum Decision of August 18, 2005), Division II cites *Schwab v. Ames Construction*, 207 Ariz. 56, *Valley Nat'l Bank of Ariz. v. Meneghin*, 130 Ariz. 119, and *Wenc v. Sierra Vista Unified Sch. Dist.* No. 68, 210 Ariz. 183, in support of their view that Davidsons waived their right to challenge both the Motion to Withdraw and the trial court's granting the motion.

In *Schwab v. Ames Construction*, Schwab filed a consent to the withdrawal of his counsel on December 11, 2001, whereas Davidsons never consented to the withdrawal of their counsel. Moreover, Division I held that Schwab's failure to respond did not in and of itself authorize a judgment against him. "*Further, public policy militates against the dismissal of Schwab's case based*

solely on his failure to file a timely response." "*We conclude that the trial court abused its discretion in granting summary judgment against Schwab.*" Notwithstanding Davidsons' failure to respond (assuming *arguendo* that Davidsons had a duty to respond during the "*gap period*"), disputed facts exist within the record that preclude judgment against Davidsons. MJM's bald assertions (willful, malicious, libelous assertions) that his clients' objectives were "*unprofessional*", "*imprudent*", "*problematic*", and "*repugnant*", certainly do not meet a burden of showing that no genuine issues of material fact exists, a burden which typically rests with the moving party. *See Appendix X.*

In *Valley Natl Bank of Arizona v. Meneghin*, Meneghins were afforded a hearing, whereas Davidsons were not afforded a hearing. Davidsons never voluntarily and knowingly waived their right to challenge the motion to withdraw or the trial court's Order granting the motion. Arizona Rules of Civil Procedure, Rule 7.1(b) "*is not mandatory, and the failure to respond does not in and of itself authorize a judgment against the nonmoving party if the motion fails to demonstrate the movant's entitlement to the requested relief*". See *Zimmerman v. Shakman*, 204 Ariz. 231. The Supreme Court of North Carolina has held that waiver of counsel could not be presumed from silent record. *See State of North Carolina v. Neeley*, 297 S.E.2d 389.

Valley Natl Bank is distinguished by the fact that after their counsel's motion to withdraw, Meneghin failed to object *at his hearing* and retained successor legal counsel. Davidsons, however, did not terminate the attorney-client contractual relationship with MJM and QBSL either expressly or by their conduct.

The Motion to Withdraw under Rule 5.1 injured Davidsons during the "*gap interval*"[4] and greatly prejudiced the outcome of the state court proceedings. The trial judge's Order granting withdrawal under Rule 5.1 further injured Davidsons by completing the injury which began with the Motion to Withdraw and by greatly prejudicing the remaining state court proceedings.

Pima cause # C333954 is distinguished from the *Valley Natl Bank* case by the fact that, in the former case, the trial judge and judges of Division II acted in clear absence of all jurisdiction, by *repeatedly* failing to recuse themselves pursuant to Arizona's *mandatory* disqualification statutes. *See the Petition for Writ of Mandamus which accompanies this Petition.*

Assuming *arguendo* that Davidsons had a duty to appear during the "*gap interval*" and a duty to object to their retained counsel's motion during the "*gap interval*", Davidsons had neither the *means* (retained counsel willing to act *in their behalf* and timely access to their case file) nor the *opportunity* (a hearing) with which to object to the Motion to Withdraw of December 17, 2001. Pima cause # C333954 is distinguished from the *Wenc v. Sierra Vista* case by the fact that Davidsons had *no alternative* to appearing *pro se* and raising for the first time on interlocutory appeal the constitutionality of Rule 5.1. To wit, MJM and QBSL did not request a hearing nor did they file an objection on behalf of their clients at the time of MJM's and QBSL's Motion to Withdraw, despite their contractual, fiduciary, ethical, and professional responsibility to do so. With their Motion to Withdraw, MJM and QBSL ceased providing Davidsons with legal representation (effective *or otherwise*) under color of Arizona Rule 5.1. MJM's Motion to Withdraw [*under color of Rule 5.1*], in and of itself, deprived Davidsons of their

4 Davidsons refer to the "*gap interval*" as that interval of time between MJM's Motion to Withdraw (December 18, 2001) and the Trial Judge's Order (January 11, 2002) granting attorney withdrawal.

property and liberty interest in retained legal counsel during the "*gap interval*" without according Davidsons "*a legal guarantee of present enjoyment*" under state law. Rule 5.1 enabled and provided MJM and QBSL with encouragement by the state for them to abandon their clients during the "*gap interval*" without due process.

Issue 3: Petitioners stated a constitutional claim against their privately-retained attorney and his law firm.

Petitioners incorporate here by reference the arguments found in Issues #4, #5, and #6 of the Opening Brief and Issues #3 and #4 of the Reply Brief to Division II in 2 CA-CV 2005-0011. The coerced dismissal of Davidsons' counsel vitiated the judgment because it violates the Due Process Clause of the Fourteenth Amendment (this is constitutional error that may not be deemed harmless). Withdrawal of counsel in the State Action deprived Davidsons of federal constitutional rights. Davidsons have stated a constitutional claim against their privately-retained attorney and his law firm. *Davidsons' federal action stated a substantial claim under 42 U.S.C. § 1983, § 1985, and § 1988, because it sought to redress a deprivation of federal statutory rights secured by the Constitution and laws of the United States. See Appendices I, J, K, L, N, and O.* Davidsons have asserted the state involvement necessary to transform the private acts of MJM, QBSL, Bruce R. Heurlin, state trial judge (JLE), and Grossmans, into state action covered by 42 U.S.C. § 1983.

Application of Arizona Rule 5.1 to Davidsons, by agreement between the State Actors, acting in concert, was motivated by invidiously discriminatory animus. Intentional discrimination in the dismissal of Davidson' retained counsel is a grave constitutional trespass, possible only under color of state authority, and wholly within the power of the state to prevent. The State of

Arizona, by its enactment, application, and regular enforcement of Rule 5.1, Ariz. R. Civ. P., has "*intertwined itself* in the very activity [attorney withdrawal] which caused Davidsons' injury." The Trial Judge Ordered the grant of attorney withdrawal under color of Arizona Rule 5.1. MJM's and QBSL's Motion to Withdraw cited Rule 5.1 as authority for their motion. There is an extremely close nexus between the state [the Arizona Trial Court system] and the challenged action of the regulated entity [MJM and QBSL]. The action of the latter may be fairly treated as that of the state itself. The State has insinuated itself into a position of interdependence with MJM and QBSL so that it is a joint participant in the enterprise.

Davidsons' due process rights were violated because the statutory scheme [rule 5.1] *afforded no hearing or certification process*. The attorney withdrawal was ordered by the Court, after motion by MJM and QBSL citing authority under rule 5.1 and non-objection by opposing legal counsel [Karp, Heurlin & Weiss]. *Opposing counsel actually drafted the Trial Judge's Order. The Order of the Trial Judge bears the letterhead of opposing counsel.* Davidsons were the real parties in interest to attorney withdrawal, not Grossmans. QBSL, MJM, and opposing legal counsel *already knew* that the Trial Judge would Order Attorney Withdrawal. QBSL, MJM, and opposing legal counsel were so confident of this assertion that opposing counsel actually drafted the Trial Judge's Order, effectively making MJM, QBSL, opposing counsel (Bruce R. Heurlin), and the Trial Judge (JLE), state actors, all acting pursuant to Rule 5.1. The Motion to Withdraw was a self-fulfilling prophecy, culminated by the Trial Judge's signature on the previously written Order [by opposing counsel] and encouraged and enabled by Rule 5.1.

There is a causal link between Davidsons' injury and the State's Action sufficient to support standing under

Article III. The State has exercised "*coercive power*" or provided such significant encouragement that "*the choice must in law be deemed to be that of the State.*" There is such a close nexus between the State and the challenged action that seemingly private behavior may be fairly treated as that of the State itself. Under the joint participant theory, governmental body [the Arizona Trial Court system] and private party [MJM and QBSL] were intertwined in symbiotic relationship. Relevant facts show pervasive entwinement between government [Arizona Trial Court system] and ostensibly private organization [MJM and QBSL] to point of largely overlapping identity.

State participation in a nominally private activity can result in a characterization of that activity as "*state action*" for purposes of 42 U.S.C. § 1983. Private actors may align themselves so closely with either state action or state actors that the undertow pulls them inexorably into the grasp of § 1983. There is liability of private parties who conspire with immune officials in federal civil rights action under 42 U.S.C. § 1983. See *44 A.L.R. Fed. 547.*

In *Pugliano v. Staziak*, 231 F.Supp. 347, the court stated that, "*unless the attorney wronged the [criminal] defendant in furtherance of a conspiracy participated in by persons acting under color of state law, the court declared, it would not have jurisdiction of any suit against him.*" MJM and QBSL conspired with each other, the Trial Judge (JLE), Bruce R. Heurlin, and Grossmans, to deprive Davidsons of the presently-enjoyed benefit of their retained legal counsel, just four months before the scheduled trial date, under color of Arizona Rule 5.1.

Davidsons' claim of "*extraordinary circumstances*" is not rooted only in the claimed Constitutional violation. Davidsons have sustained *actual damages* and *irreparable harm. The deprivation occurred as the result of some established state procedure under Arizona Rule 5.1.* There was State Action. MJM, QBSL, JLE, Bruce R. Heurlin,

Jay Grossman, and Eudice Grossman, were all State Actors, who conspired to deprive Davidsons of their presently-enjoyed liberty and property interest in retained legal counsel in the state court proceeding. *Davidsons' property and liberty interest in their retained legal counsel was not accorded a "legal guarantee of present enjoyment" under State law.*

Davidsons assert invidious discrimination purpose when Arizona Rule 5.1 was enacted, applied, and enforced. Davidsons have alleged that MJM and QBSL caused willful injury to their clients (Davidsons) and acted out of malice and bad motive. Davidsons have alleged facts to indicate that MJM and QBSL, exceeded the scope of their function and intentionally "*disregarded*" Davidsons' rights. *See Minns v. Paul,* 542 F.2d 899.

Davidsons have alleged that MJM's and QBSL's conduct, under color of Ariz. R. Civ. P. Rule 5.1, was intentionally harmful to Davidsons, or otherwise deliberately inconsistent with their obligations to Davidsons, so as to be a voluntary excursion outside the scope of their duties. Davidsons have established State Action in C333954. Liability may attach to MJM, QBSL, trial judge JLE, and Bruce R. Heurlin, under 42 U.S.C. § 1983, when the acts complained of are done outside the scope of their duty.

CONCLUSION

Wherefore, Petitioners pray that this Court issue writ of certiorari, declare Arizona Rules of Civil Procedure Rule 5.1 to be facially unconstitutional, or unconstitutional as applied to Davidsons in the State Action. Petitioners further pray that this Court grant Petitioners such other and further relief as it may deem to be just and equitable.

APPENDIX

APPENDIX A: Order of Arizona Supreme Court on April 20, 2006, which denied Petition for Review, denied Motion to Expedite Petition for Review, denied Renewed Motion to Expedite Petition for Review, denied Motion to Vacate Final Judgments Under Rule 60(c)(4).....App. 1

APPENDIX B: Order of Division II Arizona Court of Appeals on September 8, 2005, which denied Motion for Reconsideration.....App. 2

APPENDIX C: Memorandum Decision of Division II on August 18, 2005, which affirmed the "*final judgments*" of the trial court.....App. 3-17

APPENDIX D: Memorandum Decision of April 4, 2005, from Ninth Circuit U.S. Court of Appeals (# 03-17342).....App. 18-20

APPENDIX E: Memorandum Decision of April 4, 2005, from Ninth Circuit U.S. Court of Appeals (# 04-15304).....App. 21-23

APPENDIX F: Second Amended Judgment (Nunc Pro Tunc) of March 23, 2005.....App. 24-25

APPENDIX G: Amended Judgment (Nunc Pro Tunc) of January 4, 2005.....App.26-27

APPENDIX H: Judgment of November 26, 2004, from Pima County Superior Court, Case No. C333954 .....App. 28-29

APPENDIX HH: Order of November 24, 2004, from Pima County Superior Court, Case No. C333954.....App.30-32

APPENDIX I: Order of November 9, 2004, from Pima Case No. C333954.....App. 33-35

APPENDIX J: Order of April 29, 2004, Pima County Superior Court, Case No. C333954.....App. 36-37

APPENDIX K: Davidsons' Motion to Amend Defendants' Answer, To Add Counterclaims, and Add Parties in C333954 dated February 26, 2004.....App. 38-40

APPENDIX L: Order, February 2, 2004, U.S. District Court, Arizona District, Docket No. 9, Civil Case # CV-03-00580-FRZ.....App. 41-46

APPENDIX M: Mandate of Arizona Court of Appeals of November 26, 2003, (#2 CA-CV 2002-0051).....App. 47

APPENDIX N: Order, November 24, 2003, U.S. District Court, Arizona District, Docket No. 56, Civil Case # CV-03-00110-FRZ.....App. 48-51

APPENDIX O: Plaintiffs' Original Complaint & Application for Injunctive Relief in U.S. District Court Case # CV-03-00580-FRZ, cover page and prayer for relief .....App. 52-53

APPENDIX P: Order, Arizona Supreme Court re: action taken August 8, 2003; ORDERED: Petition for Review to Supreme Court = DENIED. FURTHER ORDERED: Request for Attorneys' Fees [Appellees Grossman] = GRANTED, Arizona Supreme Court Case No. CV-03-0148-PR.....App. 54

APPENDIX Q: News Release of the Commission on Appellate Court Appointments on March 28, 2003 ....App. 55

APPENDIX R: Memorandum Decision, Appeal Dismissed, February 27, 2003, Arizona Court of Appeals, Division Two, Case No. 2 CA-CV 2002-0051 .....App. 56-59

APPENDIX S: Notice of Public Meeting of the Commission on Appellate Court Appointments on December 13, 2002.....App. 60

APPENDIX T: Agenda of May 10, 2002, meeting of Commission on Appellate Court Appointments .....App. 61

APPENDIX U: Article, from Tucson Citizen on April 15, 2002.....App. 62

APPENDIX V: Order of January 11, 2002, in Pima Case No. C333954.....App. 63-64

APPENDIX VV: Notice of Change of Address, dated February 5, 2002, in Pima Case No. C333954..... .....App. 65

APPENDIX VVV: Notice of Appearance, dated February 5, 2002, in Pima Case No. C333954.....App. 66

APPENDIX VVVV: Notice of Appeal, dated February 11, 2002, in Pima Case No. C333954.....App. 67

APPENDIX W: Administrative Order No. 2001-119 of December, 19, 2001, by Arizona Supreme Court..App. 68

APPENDIX X: Motion to Withdraw as Counsel of Record and to Continue Trial of December 18, 2001, in Pima Case No. C333954.....App. 69-71

APPENDIX XX: Letter of October 17, 2001 from MJM to RD.....App. 72

APPENDIX Y: Announcement Letter of Change of Law Firm on January 15, 2001.....App.73-74

APPENDIX Z: Ariz. R. Civ. P., Rule 5.1 (A)(2) (B) and (C).....App. 75

App. 1

APPENDIX A

Supreme Court
STATE OF ARIZONA

April 20, 2006

RE: JAY GROSSMAN et ux v ROBERT DAVIDSON et ux
Arizona Supreme Court No. CV-05-0363-PR
Court of Appeals Division Two No. 2 CA-CV 05-0011
Pima County Superior Court No. C-333954

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on April 20, 2006, in regard to the above-referenced cause:

ORDERED: Motion to Expedite Petition for Review by Arizona Supreme Court = DENIED.

FURTHER ORDERED: Motion to Vacate Final Judgments Under Rule 60(C)(4) = DENIED.

FURTHER ORDERED: Renewed Motion to Expedite Petition for Review = DENIED.

FURTHER ORDERED: Petition for Review = DENIED.

Record returned to the Court of Appeals, Division Two, Tucson, this 20th day of April, 2006.

Noel K Dessaint, Clerk

App. 2

APPENDIX B

COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

September 08. 2005 (Filed Sep. 8, 2005)

RE: GROSSMAN v. DAVIDSON
2 CA-CV 2005-0011
Pima County Superior Court Cause No. C-333954

The following action was taken by the Court of Appeals for the State of Arizona, Division Two, Department A on September 07, 2005,

ORDERED: Motion for Reconsideration is DENIED.

Judge Florez, Judge Brammer and Judge Eckerstrom participated in the determination of this matter.

/s Peter J. Eckerstrom
Peter J. Eckerstrom
Acting Presiding Judge

APPENDIX C

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JAY GROSSMAN and EUDICE GROSSMAN, husband and wife, Plaintiffs/Appellees,	2 CA-CV 2005-0011 DEPARTMENT A
v.	**MEMORANDUM DECISION** Not for Publication
ROBERT MICHAEL DAVIDSON, and VANESSA DAVIDSON, aka VANESSA E. KOMAR, husband and wife, Defendants/Appellants	Rule 28, Rules of Civil Appellate Procedure (Filed Aug. 18, 2005)

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY
Cause No. C-333954
Honorable Jane L. Eikleberry, Judge

AFFIRMED

Robert M. Davidson and
Vanessa E. Komar — Kilgore, Texas
In Propia Personae

Karp, Heurlin & Weiss, P.C.
Bruce R. Heurlin — Tucson
Attorneys for Plaintiffs/Appellees

BRAMMER, Judge.

¶1 Plaintiffs/appellees Jay and Eudice Grossman sued defendants/appellants Robert Davidson and Vanessa Komar, alleging Davidson had made false statements that had caused Grossman's employer to fire him and that had damaged Grossman's professional reputation. Davidson and Komar (collectively, the Davidsons) appeal from the trial court's grant of their former attorney's motion to withdraw his representation; its denial of their motion to amend their answer to add counterclaims and parties; its denial of their emergency motion to stay the proceedings; and its entry of default and judgment, including the imposition of sanctions against them. For the following reasons, we affirm.

Facts and Procedural History

¶2 On review of a default judgment, we view the facts in the light most favorable to sustaining the judgment.[1] See *Goglia v. Bodnar*, 156 Ariz. 12, 749 P.2d 921 (App. 1987). In July 1999, Dr. Jay Grossman filed a complaint against Dr. Robert Davidson and his wife Vanessa for defamation, abuse of process, intentional infliction of emotional distress, and intentional interference with contract. Grossman's allegations stemmed from a criminal complaint Davidson had filed in which he alleged that Grossman had physically assaulted him; Davidson's statements to that effect to Grossman's employer; and

[1] The Davidsons have failed to cite the record on appeal in either their statement of the case or their statement of facts, in violation of Rule 13(a)(4), Ariz. R. Civ. App. P., 17B A.R.S. Consequently, we look to the Grossmans' rendition of the factual and procedural background of this case, as well as our own review of the record. See *State Farm Mut. Auto. Ins. Co. V. Arrington*, 192 Ariz. 255, 963 P.2d 334 (App. 1998).

Davidson's report to a federal agency challenging Grossman's professional research practices. The Davidsons counterclaimed, alleging Jay Grossman had committed assault and battery on Davidson.

¶3 On December 18, 2001, the Davidsons' attorney, Michael Meehan, filed a motion to withdraw as counsel, citing failure of communication and lack of trust.[2] After the Davidsons failed to timely respond to the motion, the trial court granted it and continued the trial date. On February 7, 2002, Davidson filed a notice of apearance, stating that he was "representing the Defendants/Counterclaimants without an attorney." On February 13, Davidson filed a notice of appeal in this court challenging the trial court's grant of Meehan's motion. We dismissed the interlocutory appeal for lack of jurisdiction and awarded the Grossmans attorney fees and costs, finding that Davidson's attempt to appeal the trial court's gran of the withdrawal motion had been frivolous. *Grossman v. Davidson*, No. 2 CA-CV 2002-0051 (memorandum decision filed Feb. 27, 2003).[3]

¶4 Davidson then unsuccessfully petitioned to transfer the case to our supreme court and filed documents in federal courts, including the United States Supreme Court, challenging the trial court's grant of Meehan's motion to withdraw as counsel, alleging, among other counts, racketeering and conspiracy. In November 2003, the Arizona district court dismissed with prejudice Davidson's claims, and the Ninth Circuit Court of Appeals affirmed that dismissal.

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2 Meehan filed his motion four months before the schedule trial date, which the trial court rescheduled.

3 We also noted that, regardless of the procedural impropriety of the interlocutory appeal, Davidson had not filed his notice of apeal within the required thirty-day period, see Rule 9(a), Ariz. R. Civ. App. P., 17B A.R.S., and it was, accordingly, untimely.

¶5 After this court issued its mandate on November 26 2003, the trial court held a status conference on January 20, 2004, and set deadlines of March 19 for compliance with Rule 26.1, Ariz. R. Civ. P., 16 A.R.S., Pt. 1, and April 30 for the completion of discovery. Trial was set for October 12. On February 27, the Davidsons moved to amend their answer to add counterclaims and parties. On March 23, citing "excusable neglect," they belatedly moved to enlarge the time for filing the Rule 26.1 disclosure statement and to enlarge the discovery deadline. The trial court denied the motions on April 29, and warned them that filing groundless motions or attempting to further delay the proceedings would result in the imposition of sanctions. The Davidsons then filed an untimely "objection to minute entry," in which they argued that they had been deprived of "a competent state forum in which to raise [their] federal constitutional concerns" and insisted that the trial court had improperly denied their motion to add counterclaims and parties. The court viewed the motion as one for reconsideration, albeit untimely, and denied it.

¶6 The parties' joint pretrial statement was due to be filed September 22, 2004. The Davidsons refused to participate in the preparation of that statement, but on the day it was due, filed an emergency motion to stay the proceedings. That same day, the Grossmans filed a motion for entry of default and for sanctions based on the Davidsons' failure to participate in preparing the joint pretrial statement and their repeated attempts to delay the procedings and to harass the Grossmans with frivolous filings. The Davidsons opposed the motion, citing the various filings in federal court and the necessity of granting their motion for an emergency stay. The court granted the Grossmans' motion for default and sanctions on November 9. On November 16, the Davidsons moved to vacate the entry of default and the imposition of sanctions, which the court treated as a motion for reconsideration and

denied.

¶7 That month, the court conducted a hearing on damages, which the Davidsons did not attend, although the day before that hearing they had filed a petition for special action in the Arizona Supreme Court requesting that the entry of default and imposition of sanctions be vacated. On November 26, the trial court entered judgment in the Grossmans' favor in the amount of $7,849,031.27. The Davidsons filed a notice of appeal, another motion - in the trial court - to vacate the default judgment, and another notice of appeal.[4]

Motion to Withdraw as Counsel

¶8 The Davidsons challenge, on multiple grounds, the trial court's grant of Meehan's motion, made pursuant to Rule 5.1(a)(2)(B) and (C), Ariz. R. Civ. P., 16 A.R.S., Pt. 1, to withdraw as counsel. The rule permits an attorney in a pending action to withdraw his or her representation if the attorney provides the reasons for that withdrawal in a written application. Ariz. R. Civ. P. 5.1(a)(2).

Constitutionality of Rule 5.1

¶9 The Davidsons first argue that Rule 5.1(a)(2)(B) and (C) is unconstitutional both on its face and as applied here. Citing "procedural and substantive due process grounds, equal protection grounds, takings clause grounds, and right to contract grounds," the Davidsons insist that the trial court's order granting Meehan's motion to withdraw as their counsel deprived them of their "presently-enjoyed benefit of retained legal representation in an ongoing civil proceeding."

¶10 As best we can discern, the Davidsons' argument appears to challenge the trial court's failure to conduct a hearing on Meehan's motion to withdraw and the failure

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4 The trial court determined that, because of the multiple notices of appeal the Davidsons had filed, it lacked jurisdiction to rule on their motion to vacate the judgment.

of Rule 5.1 to mandate a hearing. But the record reflects, and the Davidsons do not appear to contest, that they neither requested a hearing nor objected at the time to Meehan's motion - on a constitutional basis or on any other ground.[5] *See* Ariz. R. Civ. P. 7.1(a), 16 A.R.S., Pt. 1 (party opposing motion required to file answering memorandum within ten days of filing of motion); Ariz. R. Civ. P. 7.1(b) (when party fails to timely oppose motion, trial court may dispose of motion summarily and deem failure to respond as consent to granting or denial). Davidson's February 13 "notice of appeal" in this court challenging the January 11 order granting withdrawal was, in addition to being procedurally improper, clearly untimely. This is so even if we were to characterize it as a response to the motion to withdraw or as a motion for reconsideration of the order granting that motion. *See* Ariz. R. Civ. P. 7.1(a); *see also Schwab v. Ames Constr.*, 207 Ariz. 56, 83 P.3d 56 (App. 2004) (if party opposinig motion fails to respond, trial court may summarily dispose of motion). Accordingly, the Davidsons waived their right to challenge both that motion and the trial court's granting the motion. *See Valley Nat'l Bank of Ariz. V. Meneghin*, 130 Ariz. 119, 634 P.2d 570 (1981) (appellants who failed to object to attorney's motion to withdraw voluntarily and knowingly waived their later challenge to court's granting motion);[6] *Wenc v. Sierra Vista Unified Sch. Dist. No. 68, 210* Ariz. 183, 108 P.3d

5 In an untimely response to the motion to withdraw, Davidson simply filed a notice in the trial court of his own appearance as counsel.

6 Our supreme court in *Meneghin* rejected the appellants' challenge to the trial court's grant of a motion to withdraw as counsel, finding that, despite the motion's failure to comply with binding procedural requirements, such as obtaining the appellants' signatures, and the fact that the trial date had already been set, the appellants had waived their objection to that motion on those grounds on appeal.

962 (App. 2005) (arguments not raised in trial court are waived on appeal).

¶11 Consequently, the Davidsons' bare and entirely unsupported assertion that they "never waived [their] right to appeal the trial judge's signed ruling. . . order[ing] attorney withdrawal" notwithstanding, they have waived their challenges to Rule 5.1's facial validity and its application to their case on appeal.

Order Granting Withdrawal

¶12 The Davidsons additionally challenge, on abuse of discretion grounds, the trial court's order granting Meehan's motion to withdraw as counsel, arguing that the order arbitrarily deprived them of their legal representation and absolved Meehan and his law firm of their contractual and professional duties. Because the Davidsons failed to object to the motion to witdraw, we do not address this issue.[7]

Motion to Amend Answer and Add Counterclaims and Parties

¶13 The Davidsons also challenge without citation to legal authority as required by Rule 13(a)(6), Ariz. R. Civ. P., 17B A.R.S., the trial court's order denying their motions to amend their answer and to add counterclaims and parties. We review the court's denial of these motions for an abuse of discretion. *See State Comp. Fund v. Yellow Cab Co. Of Phoenix*, 197 Ariz. 120, 3 P.3d 1040 (App. 1999) (motion to add party); *Tobel v. Travelers Ins. Co.*, 195 Ariz. 363, 988 P.2d 148 (App. 1999) (motion to add claims); *Haynes v. Syntek Fin. Corp.*, 184 Ariz. 332, 909 P.2d 399 (App. 1995) (motion to amend answer).

¶14 The Davidsons filed their motion on February 27,

7 The Davidsons also contend Meehan, his law firm, the Grossmans, and the trial judge "conspired with each other, as State Actors," to deprive them of their constitutionally protected property interest in retained legal counsel. Because this contention is unsupported by any legal authority, we do not address it. *See* Ariz. R. Civ. App. P. 13(a)(6).

2004, seven months before the scheduled trial date and two months before the deadline for completing discovery. They sought to amend their answer to the first amended complaint to add several counterclaims and defenses that "have matured or been acquired by the defendants, consequent to the dismissal of [the case brought in federal court]" and to add as parties two individuals and one corporation. The trial court denied all requests, reasoning as follows:

> Defendants belatedly seek to unnecessarily enlarge the scope of this action to include claims and parties, some, if not all, of which are presently before the 9th Circuit Court of Appeals. Defendant. . . Davidson was advised of the trial date, the deadline for complying with Rule 26.1 and the discovery deadline during the status conference of January 20, 2004. The motion to enlarge the deadlines was filed after the disclosure deadline. Defendants' motions appear to be filed for purposes of delay and harassment. To allow the extensive proposed amendments to the answer and the counterclaim would greatly prejudice the plaintiffs given that the trial date is set for October 13, 2004. This case has been pending for almost five years and absent extraordinary and unforeseen circumstances, the trial date will not be continued.

¶15 The Davidsons insist that the court's denial of their motion to add counterclaims and parties was "tantamount to denying [them] the right to argue and prove [a] pattern of misconduct and conspiracy" claiming the ruling prevented them from asserting claims under the Prescription Drug User Fee Act. (Emphasis deleted.) "[A] party may amend [a] pleading only by leave of court or by written consent of the adverse party. Leave to amend shall be freely given when justice requires." Ariz. R. Civ. P. 15(a), 16 A.R.S., Pt. 1. "Nonetheless, it is within the sound discretion of the trial court whether, under all the facts and circumstances of the case, an amendment should be permitted." *Gulf Homes, Inc.*

v. Goubeaux, 136 Ariz. 33, 37, 664 P.2d 183, 187 (1983).

> A trial court does not abuse its discretion by denying a motion to amend if it finds undue delay in the request, bad faith or a dilatory motive on the part of the movant, undue prejudice to the opposing party as a result of the amendment, or futility in the amendment.

Bishop v. State Dep't of Corr., 172 Ariz. 472, 474-75, 837 P.2d 1207, 1209-10 (App. 1992).

¶16 The trial court found that the Davidsons' motion satisfied all of the factors outlined by Division One of this court in *Bishop:* undue delay, bad faith for the purpose of harassment, and great prejudice to the opposing party. The record supports the court's findings and its ultimate denial of the motion. The Davidsons filed their motion almost five years after the Grossmans had filed their complaint and only two months before the deadline for the completion of discovery. The substantial delay in presenting additional claims and defenses on the eve of the close of discovery could well be construed as constituting bad faith. And the numerous proposed additions would have required the Grossmans to spend significant time addressing the new theories, thereby causing them considerable prejudice in light of the upcoming October trial date. *See Haynes*, 184 Ariz. At 336, 909 P.2d at 403 ("Prejudice is the inconvenience and delay suffered when the amendment raises new issues or inserts new parties into the litigation."'), *quoting Owen v. Superior Court*, 133 Ariz. 75, 81, 649 P.2d 278, 284 (1982); *cf. Haynes* (no abuse of discretion in trial court's denial of motion to amend answer based on delay of sixteen months, prior finding that movant had failed to exercise due diligence with last-minute reversal of position, and undue prejudice to plaintiff); *Bishop* (no abuse of discretion in trial court's finding undue delay in filing motion to amend two years after complaint filed and just months before scheduled trial date).

¶17 Accordingly, although "[d]enial of leave to amend is generally an abuse of discretion where the amendment merely advances a new legal theory," *Uyleman v. D.S. Rentco,* 194 Ariz. 300 ¶ 10, 981 P.2d 1081, 1083 (App. 1999), the Davidsons' motion sought to accomplish far more than simply appending an additional legal theory to an existing claim. And "'denial [of a motion to amend a pleading] is deemed a proper exercise of the court's discretion when the amendment comes late and raises new issues requiring preparation for factual discovery which would not otherwise have been necessitated nor expected, thus requiring delay in the decision of the case.'" *Haynes,* 184 Ariz. At 336, 909 P.2d at 403, *quoting Owen,* 133 Ariz. At 81, 649 P.2d at 284. The trial court here accurately noted that the discovery deadline was only two months away and the proposed amendments would have required extensive preparation and discovery by the Grossmans. For all of the above reasons, the trial court did not abuse its discretion in rejecting the Davidsons' attempt to add several counterclaims and defenses and three new parties to the action. *See Yellow Cab; Tobel; Haynes.*

Denial of Emergency Motion to Stay Proceedings; Entry of Default and Sanctions

¶18 Again without citation to legal authority as required by Rule 13(a)(6), Ariz. R.Civ. App. P., the Davidsons challenge as an abuse of discretion th trial court's denial of their emergency motion to stay the proceedings and its grant of the Grossmans' motion for default and entry of sanctions. Despite the Davidsons' failure to support their assertions, we briefly address each in turn because we conclude they have no merit.

Motion to Stay

¶19 In denying the Davidsons' emergency motion to stay the proceedings, the trial court found "no valid reason" for a stay, noting that they had "waited until the

eve of trial" to request an emergency stay "when the appropriate time to raise the claims [they] now seek to raise was in December of 2001 when their attorney filed the motion to withdraw." The court further found the motion "groundless and. . . filed primarily for the purposes of harassment and delay."

¶20 We see no error in those conclusions. The Davidsons filed their motion on September 22, 2004, the date of the deadline set for filing the joint pretrial statement. The Davidsons neither participated in preparing the joint pretrial statement nor filed a separate statement.[8] Their motion for an emergency stay was filed only twenty days before the scheduled trial date. And the trial court properly concluded that the facts unerlying the motion, which had been premised on Meehan's motion to withdraw as counsel and the alleged "bad faith" motivating that motion, had been known to the Davidsons in December 2001, when Meehan had moved to withdraw as counsel. (Emphasis deleted.) The court did not abuse its discretion. *See generally State v. Ott*, 167 Ariz. 420, 808 P.2d 305 (App. 1990) (grant or denial of motion to stay proceedings reviewed for abuse of discretion).

Entry of Default and Sanctions

¶21 The Davidsons also challenge the trial court's grant of the Grossmans' motion for entry of default and sanctions. We review for a clear abuse of discretion a trial court's decision to strike pleadings or impose other sanctions for discovery violations. *See Wayne Cook Enters., Inc. v. Fain Props. Ltd. P'ship*, 196 Ariz. 146, 993 P.2d 1110 (App. 1999); *Montgomery Ward & Co. v. Superior Court*, 176 Ariz. 619, 863 P.2d 911 (App. 1993).

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8 Although the Davidsons insist that they "never '*refused*' to participate in the preparation of a joint pretrial statement," the record does not support that assertion and, indeed, the Davidsons do not suggest that they ever actively participated in preparing it.

¶22 In granting the Grossmans' motion for default and sanctions, the trial court noted that it had "specifically warned defendants that taking such actions" as filing motions "for the purposes of harassment and delay [or]. . . refus[ing] to participate in the preparation of a joint pretrial statement" could result in the imposition of sanctions, including striking their pleadings or entering of a default against them. The court granted the motion for default and sanctions because the Davidsons had "chosen to ignore the Court's warning and ha[d] continued to file frivolous motions for the purposes of delay of the proceedings and harassment of the plaintiffs" and had "attempted to unreasonably enlarge the scope of the proceedings."

¶23 The trial court appears to have granted the Grossmans' motion pursuant to Rules 16(f) and 37(b)(2)(B), (C), and (D), Ariz. R. Civ. P., 16 A.R.S., Pt. 1. Rule 16(f) provides, in relevant part:

> If a party . . . fails to obey a scheduling or pretrial order . . . or . . . fails to participate in good faith in . . . the preparation of the joint pretrial statement, the judge . . . shall, except upon a showing of good cause, make such orders with regard to such conduct as are just, including, among others, any of the orders provided in Rule 37(b)(2)(B), (C), or (D).

Rule 37(b)(2) provides, inter alia, for imposition of the following sanctions when a party fails to obey a pretrail order:

> (B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;
>
> (C) An order striking out pleadings or parts thereof, . . . or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

> (D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders . . . .

The Davidsons opposed the Grossmans' motion, arguing that the court's grant of Meehan's motion to withdraw; the Davidsons' pending federal court filings; and various, allegedly erroneous, state and federal court rulings during the pendency of this case precluded an entry of default and sanctions against them.

¶24 But, as the trial court noted in granting the Grossmans' motion, in its April 2004 denial of the Davidsons' motion to add counterclaims and parties, the court had admonished the Davidsons for their belated attempts to unnecessarily enlarge the scope of the action, delay the proceedings and harass the Grossmans, and had warned them that any additional, frivolous filings of groundless motions; delaying; harassing; or attempting to expand the action would result in the imposition of sanctions. Despite the warning, the Davidsons belatedly "objected" to the denial of their motion to amend their answer and to enlarge the time for discovery; filed an untimely objection to the Grossmans' motion for entry of judgment to enforce amounts ordered paid by this court and the United States Supreme Court; failed to participate in preparing the joint pretrial statement; requested an an emergency stay less than one month before the scheduled trial date; and generally failed to request hearings on motions or rulings to which they objected, yet continued to raise those challenges in later, unrelated pleadings.

¶25 And, as we have outlined in our preceeding analysis, the trial court's decision to deny the Davidsons' motion to add counterclaims and parties was based on the resulting prejudice to the Grossmans and the Davidsons' delay in so moving and was not an abuse of the court's discretion. The court's decision to sanction the Davidsons because of their attempts to unreasonably enlarge the

proceedings by failing to participate in preparing the pretrial statement and filing an emergency motion to stay the proceedings was likewise not an abuse of discretion in light of the court's prior explicit warnings. *Cf. Poleo v. Grandview Equities, Ltd.*, 143 Ariz. 130, 692 P.2d 309 (App. 1984) (sanction of default pursuant to Rule 37(b)(2) not an abuse of discretion when party had delayed objecting to discovery order until two weeks before deadline, failed to meet extended deadline, and failed to completely comply with order).

¶26 The Davidsons' broad assertion that the trial "judge is *biased* against the Davidsons in particular, and *biased* against racketeering actions, in general" finds no support in the record. The judge's statement that the Davidsons had "attempted to unreasonably enlarge the scope of the proceedings" does not, as they suggest, evince any bias. The Davidsons appear to suggest that, during the January 2004 status conference, the court improperly encouraged them to file the motion to amend their answer and add counterclaims and that, by telling them they must "file any motions to . . . amend . . . promptly," implicitly communicated that filing such motions would not be frivolous. But the record reflects the court made no such representation, and indeed, it could not have known the content of any proposed motion until it was filed. We reject the Davidsons' assertion of bias.

¶27 The trial court's denial of the Davidsons' motion and its grant of the Grossmans' motions was not an abuse of discretion. *See Wayne Cook; Montgomery Ward; see generally Ott.*

Rule 60 (c)

¶28 The Davidsons lastly contend the trial court's entry of default and sanctions against them, its November 26, 2004 judgment in favor of the Grossmans, and its amended judgment, entered nunc pro tunc on January 4,

2005, should be vacated pursuant to Rule 60(c), Ariz. R. Civ. P., 16 A.R.S., Pt 2. Even were the Davidsons able to make those challenges in th trial court, however, the record establishes that they never challenged the entry of default and sanctions or the court's judgment on the basis of Rule 60(c) in the trial court.[9] They have, accordingly, waived the contentions on appeal. *See Trantor v. Fredrikson,* 179 Ariz. 299, 878 P.2d 657 (1994).

¶29 Affirmed. The Davidsons' request for fees and costs is rejected, as they have not prevailed on appeal.

/s J. William Brammer, Jr

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s Peter J. Eckerstrom

PETER J. ECKERSTROM, Judge

/s M. Jan Florez

M. JAN FLOREZ, Judge

9 We note that the Davidsons did cite Rule 60(c) as a basis for relief in their motion to vacate the default judgment. That motion, however, was filed on December 9, 2004, a day after the Davidsons had filed a notice of apeal in this court, appealing, inter alia, the trial court's ruling granting theGrossmans' motion for default and sanctions. Therefore, the trial court was without jurisdiction to rule the Davidsons' motion, as it so noted in a subsequent minute entry.

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ROBERT M. DAVIDSON; et al., No. 03-17342
Plaintiffs - Appellants, D.C. No. CV-03-00110-FRZ
v.

JUDGEMENT

VIVRA INC., et al., (Filed Apr. 4, 2005)
Defendants - Appellees.

Appeal from the United States District Court for the District of Arizona (Tucson).

This case came on to be heard on the Transcript of the Record from the United States District Court for the District of Arizona (Tucson) and was duly submitted.

On consideration whereof, it is now here orderd and adjudged by this Court, that the judgment of the said district Court in this cause be, and hereby is **AFFIRMED**.

Filed and entered Monday, April 4, 2005

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBERT M. DAVIDSON; et al.,
Plaintiffs - Appellants,
v.
VIVRA INC.; et al.,
Defendant -Appellees

No. 03-17342

D.C. No. CV03-00110-FRZ

MEMORANDUM*

(Filed Apr. 4, 2005)

Appeal from the United States District Court
for the District of Arizona
Frank R. Zapata, District Judge, Presiding

Submitted March 23, 2005**

Before: B. FLETCHER, TROTT, and PAEZ,
Circuit Judges.

Robert M. Davidson appeals pro se the district court's judgment dismissing his action pursuant to the *Younger* abstention doctrine. We have jurisdiction under 28 U.S.C. § 1291. After de novo review, *Baffert v. Calif. Horse Racing Bd.*, 332 F.3d 613, 617 (9th Cir. 2003), we affirm.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Davidson requested that the district court stay the ongoing proceedings in *Grossman v. Davidson*, Pima County Superior Court Case No. C-333954 (the "State Action"). Thus, there is "no doubt" that the federal injunctive relief would interfere directly with those proceedings." *Baffert*, 332 F.3d at 617 (*Younger* abstention proper where party sought to enjoin state administrative proceedings).

Contrary to Davidson's contention, *Younger* abstention is not limited to criminal procedings. *See Columbia Basin Apartment Ass'n v. City of Pasco*, 268 F.3d 791 (9th Cir. 2001) ("The *Younger* principle applies to civil proceedings...in which important state interests are involved."). Davidson's allegation that the Arizona statutory scheme regarding the withdrawal of counsel is unconstitutional is sufficiently important to invoke *Younger* abstention. Furthermore, there is no support for Davidson's contention that he was precluded from raising federal law claims in the state forum. *See Am. Consumer Publ'g Ass'n, Inc. V. Margosian*, 349 F.3d 1122, 1127 (9th Cir. 2003) ("Federal courts presume that a state court is competent to determine issues of federal law, even if those issues involve federal constitutional claims."). Finally, Davidson contends that the withdrawal of counsel in State action deprived him of his federal constitutional rights and that the "extraordinary circumstances" exception to *Younger* abstention therefore applies. This contention lacks merit. *See Baffert*, 332 F.3d at 621 ("[T]he constitutional dimension of the error claimed does not, by itself, constitute an exception to the application of *Younger* abstention.").

Davidson's remaining contentions are similarly unpersuasive.

We deny all pending motions.

AFFIRMED.

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBERT M. DAVIDSON; et al., Plaintiffs - Appellants,
No. 04-15304
D.C. No. CV-03-00580-FRZ

v.

MICHAEL J. MEEHAN; et al., Defendants - Appellees.

JUDGMENT
(Filed Apr. 4, 2005)

Appeal from the United States District Court for the District of Arizona (Tucson).

This cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Arizona (Tucson) and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is **AFFIRMED.**

Filed and entered Monday, April 04, 2005.

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBERT M. DAVIDSON; et al., Plaintiffs-Appellants, v. MICHAEL J. MEEHAN; et al., Defendants-Appellees.

No. 04-15304
D.C. No. CV-03-00580-FRZ

MEMORANDUM*
(Filed Apr. 4, 2005)

Appeal from the United States District Court
for the District of Arizona
Frank R. Zapata, District Judge, Presiding

Submitted March 23, 2005**

Before: B. FLETCHER, TROTT, and PAEZ, Circuit Judges

Robert M. Davidson and his spouse Vanessa Komar appeal pro se the district court's judgment dismissing their action in which they alleged constitutional violations and various state-law claims against their former attorney and his law firm. We have jurisdiction under 28 U.S.C. § 1291. We review de novo whether *Younger* abstention applies. *Baffert v. Calif. Horse Racing Bd.*, 332 F.3d 613, 617 (9th Cir. 2003). We affirm.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Although appellant's request for compensatory damages may preclude dismissal under *Younger* abstention, see *Gilbertson v. Albright,* 381 F.3d 965, 968 (9th Cir. 2004) (en banc), we may affirm dismissal on any ground supported by the record, *see Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004). Dismissal was appropriate because appellants' allegations fail to state constitutional claim against their privately-retained attorney and his law firm. *See Briley v. State of Cal.*, 564 F.2d 849, 855 (9th cir. 1977) ("We have repeatedly held that a privately-retained attorney does not act under color of state law for purposes of actions brought under the Civil Rights Act.")

Appellants' remaining contentions lack merit.

We deny all pending motions.

AFFIRMED.

APPENDIX F

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

JAY GROSSMAN and EUDICE GROSSMAN, husband and wife,
Plaintiffs,

vs.

ROBERT MICHAEL DAVIDSON and VANESSA DAVIDSON, a.k.a. VANESSA E. KOMAR, husband and wife,
Defendants.

ROBERT MICHAEL DAVIDSON and VANESSA KOMAR,
Defendants/Counterclaimants,

vs.

JAY GROSSMAN and EUDICE GROSSMAN,
Plaintiffs/Counterdefendants.

No. C 333954

SECOND AMENDED JUDGMENT (Nunc Pro Tunc)

(Filed Mar. 23, 2005)

(Judge Jane L. Eikleberry)

Pursuant to the Court's November 9, 2004 Minute Entry and the November 23, 2004, hearing and good cause appearing,

Judgment is entered on all Counts of the First Amended Complaint and on the Counterclaim in favor of Jay Grossman and Eudice Grossman (Plaintiffs), husband and wife, and against both Robert Michael Davidson and Vanessa Davidson, also known as Vanessa E. Komar, (Defendants), husband and wife, individually, jointly, and severally and as to their marital community.

The Court finds as fact that as to all Counts of the First Amended Complaint and as to frivolous pleadings filed by the

Defendants in this action that Defendants acted willfully and maliciously and with the intent to cause injury to Plaintiffs.

Damages are awarded in favor of Plaintiffs and against Defendants as follows:

1. Intentional Interference with Contract:
   a. Sale of Medical Practice/Stock Purchase and Sale Agreement $2,493,921.00
   b. Loss of Salary $3,261,699.00
2. Intentional Defamation, Slander, and Slander Per Se,
   Damage to Professional and Personal Reputation $1,035,111.00
3. Intentional Abuse of Process ----- and --------
4. Intentional Infliction of Emotional Distress $500,000.00.
5. Punitive Damages $500,000.00.
6. Sanctions:
   1. Reimbursement of costs and attorneys' fees $58,300.27.
   2. Sanctions in addition to the above $ -0- .

Judgment is so ordered in favor of Plaintiffs and against Defendants in the total amount of $7,849,031.27.

The total amount of this Judgment shall earn interest at the legal rate of 10% per annum from the date of this Judgment until paid in full.

DATED March 22, 2005.

Jane L. Eikleberry

JANE L. EIKLEBERRY
Judge, Pima County Superior Court

APPENDIX G

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

JAY GROSSMAN and EUDICE GROSSMAN, husband and wife,
Plaintiffs,
vs.
ROBERT MICHAEL DAVIDSON and VANESSA DAVIDSON, a.k.a. VANESSA E. KOMAR, husband and wife,
Defendants.
ROBERT MICHAEL DAVIDSON and VANESSA KOMAR,
Defendants/Counterclaimants,
vs.
JAY GROSSMAN and EUDICE GROSSMAN,
Plaintiffs/Counterdefendants.

No. C 333954

AMENDED JUDGMENT
(Nunc Pro Tunc)
(Filed Jan. 4, 2005)

(Judge Jane L. Eikleberry)

Pursuant to the Court's November 9, 2004 Minute Entry and the November 23, 2004, hearing and good cause appearing,

Judgment is entered on all Counts of the First Amended Complaint and on the Counterclaim in favor of Jay Grossman and Eudice Grossman (Plaintiffs), husband and wife, and against both Robert Michael Davidson and Vanessa Davidson, also known as Vanessa E. Komar, (Defendants), husband and wife, individually, jointly, and severally and as to their marital community.

The Court finds as fact that as to all Counts of the First Amended Complaint and as to frivolous pleadings filed by the

Plaintiffs in this action that Defendants acted willfully and maliciously and with the intent to cause injury to Plaintiffs.

Damages are awarded in favor of Plaintiffs and against Defendants as follows:

1. Intentional Interference with Contract:
   a. Sale of Medical Practice/Stock Purchase and Sale Agreement $2,493,921.00
   b. Loss of Salary $3,261,699.00
2. Intentional Defamation, Slander, and Slander Per Se,
   Damage to Professional and Personal Reputation $1,035,111.00
3. Intentional Abuse of Process ----- and --------
4. Intentional Infliction of Emotional Distress $500,000.00.
5. Punitive Damages $500,000.00.
6. Sanctions:
   1. Reimbursement of costs and attorneys' fees $58,300.27.
   2. Sanctions in addition to the above $ -0- .

Judgment is so ordered in favor of Plaintiffs and against Defendants in the total amount of $7,849,031.27.

The total amount of this Judgment shall earn interest at the legal rate of 10% per annum from the date of this Judgment until paid in full.

DATED January 3, 2005..

/s Jane L. Eikleberry
JANE L. EIKLEBERRY
Judge, Pima County Superior Court

APPENDIX H

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

JAY GROSSMAN and EUDICE GROSSMAN, husband and wife,
Plaintiffs,
vs.
ROBERT MICHAEL DAVIDSON and VANESSA DAVIDSON, a.k.a. VANESSA E. KOMAR, husband and wife,
Defendants.
ROBERT MICHAEL DAVIDSON and VANESSA KOMAR,
Defendants/Counterclaimants,
vs.
JAY GROSSMAN and EUDICE GROSSMAN,
Plaintiffs/Counterdefendants.

No. C 333954

JUDGMENT
(Filed Nov. 26, 2004)
(Judge Jane L. Eikleberry)

Pursuant to the Court's November 9, 2004 Minute Entry and the November 23, 2004, hearing and good cause appearing,

Judgment is entered on all Counts of the First Amended Complaint and on the Counterclaim in favor of Jay Grossman and Eudice Grossman (Plaintiffs), husband and wife, and against both Robert Michael Davidson and Vanessa Davidson, also known as Vanessa E. Komar, (Defendants), husband and wife, individually, jointly, and severally and as to their marital community.

The Court finds as fact that as to all Counts of the First Amended Complaint and as to frivolous pleadings filed by the

Plaintiffs in this action that Defendants acted willfully and Damages are awarded in favor of Plaintiffs and against Defendants as follows:

1. Intentional Interference with Contract:
   a. Sale of Medical Practice/Stock Purchase and Sale Agreement $2,493,921.00
   b. Loss of Salary $3,261,699.00
2. Intentional Defamation, Slander, and Slander Per Se, Damage to Professional and Personal Reputation $1,035,111.00
3. Intentional Abuse of Process $ ---------- and
4. Intentional Infliction of Emotional Distress $500,000.00.
5. Punitive Damages $500,000.00.
6. Sanctions:
   1. Reimbursement of costs and attorneys' fees $58,300.27.
   2. Sanctions in addition to the above $ -0- .

Judgment is so ordered in favor of Plaintiffs and against Defendants in the total amount of $7,849,031.27.

The total amount of this Judgment shall earn interest at the legal rate of 10% per annum from the date of this Judgment until paid in full.

DATED November 24, 2004.

Jane L. Eikleberry
JANE L. EIKLEBERRY
Judge, Pima County Superior Court

APPENDIX HH

ARIZONA SUPERIOR COURT, PIMA COUNTY
JUDGE: HON. JANE L. EIKLEBERRY
CASE NO. C-333954
COURT REPORTER: NONE
DATE: November 24, 2004

JAY GROSSMAN and EUDICE GROSSMAN, h/w,
Plaintiffs,
vs.
ROBERT MICHAEL DAVIDSON and VANESSA DAVIDSON, a/k/a VANESSA E. KOMAR, h/w
Defendants

ROBERT MICHAEL DAVIDSON and VANESSA E. KOMAR, h/w
Defendants/Counterclaimants,
v.
JAY GROSSMAN and EUDICE GROSSMAN, h/w,
Plaintiffs/Counterdefendants.

MINUTE ENTRY UNDER ADVISEMENT RULING
(Filed Nov. 24, 2004)

The Court has considered all of the evidence produced and the arguments of counsel made at the Rule 55(b)(2) hearing. Plaintiffs' complaint alleges defamation, slander, and slander *per se*, abuse of process, intentional infliction of emotional distress, and intentional interference with a contract. Plaintiffs seek an award of damages for financial losses incurred in connection with the sale of Dr. Grossman's medical practice and the stock purchase and sale of Vivra stock, lost income, damage to Dr. Grossman's professional and personal reputation, emotional distress, and punitive damages, as well as attorneys' fees and costs.

MINUTE ENTRY

Dr. Grossman's financial records support his lost income claim. In 1997, in his first year of employment with Vivra he earned $734,766.00. In 1998 he earned $767,815.00. In 1999, when his employment was terminated in July, he made $278,590.00. In the year 2000, he made $9,175.00 in 2001 he made $219,058.00, in 2002 he made $541,970.00 and in 2003 he made $535,500.00. Using Dr. Grossman's 1998 income as a benchmark, his income loss for the years 1997 through 2003 totals $2,254,782.00. Dr. Grossman had a ten year contract with Vivra which was canceled in its third year. He is entitled to recoup his lost income resulting from the defamation, tortuous interference with contractual relations and abuse of process for seven years after the termination. Accordingly, the Court must attempt to calculate the future lost income from the three years remaining on that contract of 2004, 2005 and 2006. The Court did not use the earnings records from 1999 or 2000 as those years were aberrant years. Using the income figures from 2001, 2002 and 2003, the Court finds an average earnings loss as a result of losing employment at Vivra of $335,639.00 per year and hereby awards plaintiffs the sum of $1,006,917.00 for lost income for years 2004, 2005, and 2006, the last three years of the contract with Vivra.

Plaintiffs are also awarded the sum of $2,493,921.00 for the losses in connection with the sale of Dr. Grossman's medical practice and the stock purchase and sale, including attorneys' fees spent in connection with litigation of those matters.

The evidence supports Dr. Grossman's claim that he has been virtually black-balled from the medical research community and that his professional reputation has been seriously damaged as a result of the wrongful actions of Dr. Davidson. Accepting the plaintiffs' arguments regarding the value of the damage to Dr. Grossman's professional and personal reputation, the Court hereby awards plaintiffs the sum of $1,035,111.00.

The Court also awards plaintiffs punitive damages in the amount of $500,000.00. Plaintiffs are awarded their attorneys' fees and costs in the amount of $58,300.27 as sanctions.

Judgment signed.

Mary Silva, Deputy Clerk
by George Hofmeister, J.A.A.

APPENDIX I

ARIZONA SUPERIOR COURT, PIMA COUNTY
JUDGE: HON. JANE L. EIKLEBERRY
CASE NO. **C-333954**
COURT REPORTER: NONE
DATE: November 9, 2004

JAY GROSSMAN and EUDICE GROSSMAN, h/w,
Plaintiffs,
vs.
ROBERT MICHAEL DAVIDSON and VANESSA DAVIDSON, a/k/a VANESSA E. KOMAR, h/w
Defendants

ROBERT MICHAEL DAVIDSON and VANESSA E. KOMAR, h/w
Defendants/Counterclaimants,
v.
JAY GROSSMAN and EUDICE GROSSMAN, h/w,
Plaintiffs/Counterdefendants.

MINUTE ENTRY
IN CHAMBERS RULINGS RE: DEFENDANTS' EMERGENCY MOTION TO STAY THE PROCEEDINGS AND PLAINTIFFS' MOTION FOR ENTRY OF DEFAULT AND SANCTIONS
(Filed Nov. 9, 2004)

The Court has reviewed and carefully considered both parties' motions and objections. The Court finds that the defendants have asserted no valid reason to stay these proceedings. This case was originally filed on July 2, 1999 and is the oldest case pending before this division of the Pima County Superior Court. Defendants have had ample opportunity to raise

MINUTE ENTRY

their claims and the Court notes that when defendants' attorneys filed the motion to withdraw as counsel of record, the defendants failed to object to the motion. Nonetheless, they filed an appeal from the Court's granting of the motion to withdraw. The Arizona Court Appeals rejected the appeal. Defendants argue that they hav asserted a federal constitutional challenge to *Arizona Rule of Civil Procedure* 5.1 and this is presently pending before the Ninth Circuit Court of Appeals. The Court has reviewed a copy of defendants' petition for writ of certiorari to the United States Supreme Court which was rejected as untimely. Defendants waited until the eve of trial to file a request for an emergency stay when the appropriate time to raise the claims they now seek to raise was in December of 2001 when their attorney filed the motion to withdraw. The Court finds that defendants' motion for an emergency stay is groundless and was filed primarily for the purposes of harassment and delay. Defendants' motion to stay proceedings is hereby denied.

Plaintiffs filed a motion for entry of default and sanctions arguing that the motion to stay the proceedings was filed for the purposes of harassment and delay, in direct violation of the Court's prior warnings. Defendants also refused to participate in the preparation of a joint pretrial statement. The Court has specifically warned defendants that taking such actions might result in the imposition of sanctions, including the striking of counterclaims, the striking of their answer, the entering of a default against them and an award of additional attorneys' fees and costs. The minute entry of April 29, 2004, states:

> Defendants are warned that filing groundless motions, taking actions primarily for delay or harassment, and attempts to unreasonably expand or delay the proceeding may result in the imposition of sanctions including but not limited to, the striking of their counterclaim, the striking

> of their answer, entering of a default against them, and an award of additional attorneys fees and costs to plaintiff.

Defendants have chosen to ignore the Court's warning and have continued to file frivolous motions for the purposes of delay of the proceedings and harassment of the plaintiffs. Defendants have also attempted to unreasonably enlarge the scope of the proceedings. Accordingly, plaintiffs motion for entry of default and sanctions is hereby granted. Defendants' counterclaim is hereby dismissed with prejudice. Plaintiffs are awarded their attorney's fees and costs incurred in defending the allegations of the counterclaim. Defendants' answer is stricken and defendants are precluded from defending the allegations contained in the plaintiffs' first amended complaint.

A hearing is hereby set pursuant to Rule 55(b)(2) for Tuesday, November 23, 2004 at 1:30 p.m. at which time the plaintiffs may present evidence of damages. The estimated time of hearing is one hour.

/s Jane L. Eikleberry

Jane L. Eikleberry
Judge of the Superior Court

APPENDIX J

ARIZONA SUPERIOR COURT, PIMA COUNTY
JUDGE: HON. JANE L. EIKLEBERRY
CASE NO. C-333954 COURT REPORTER: NONE
DATE: April 29, 2004

JAY GROSSMAN and EUDICE GROSSMAN, h/w,
Plaintiffs,
vs.
ROBERT MICHAEL DAVIDSON and VANESSA DAVIDSON, a/k/a VANESSA E. KOMAR, h/w
Defendants

ROBERT MICHAEL DAVIDSON and VANESSA E. KOMAR, h/w
Defendants/Counterclaimants,
v.
JAY GROSSMAN and EUDICE GROSSMAN, h/w,
Plaintiffs/Counterdefendants.

MINUTE ENTRY
IN CHAMBERS RULINGS RE: DEFENDANTS' MOTION TO AMEND DEFENDANTS' ANSWER, TO ADD COUNTERCLAIMS AND ADD PARTIES, PLAINTIFFS' MOTION TO REQUIRE DEFENDANTS TO PAY PLAINTIFFS FOR COSTS AND ATTORNEYS' FEES ASSESSED FOR FRIVOLOUS APPEALS, DEFENDANTS' MOTION TO ENLARGE TIME TO FILE RULE 26.1 DISCLOSURE STATEMENT AND DEFENDANTS' MOTION TO ENLARGE TIME FOR THE DISCOVERY DEADLINE

(Filed Apr. 29, 2004)

The Court has reviewed all of the motions, oppositions and replies submitted. The complaint in this action was filed on July 2, 1999. The case is set for trial on October 13, 2004. On January 20, 2004, the parties were ordered to comply with Rule 26.1 on or before Friday, March 19, 2004. The discovery deadline was set

for Friday, April 30, 2004.

Defendants belatedly seek to unnecessarily enlarge the scope of this action to include claims and parties, some, if not all, of which are presently before the 9th Circuit Court of Appeals. Defendant Robert Michael Davidson was advised of the trial date, the deadline for complying with Rule 26.1 and the discovery deadline during the status conference of January 20, 2004. The motion to enlarge the deadlines was filed after the disclosure deadline. Defendants' motions appear to be filed for purposes of delay and harassment. To allow the extensive proposed amendments to the answer and the counterclaim would greatly prejudice the plaintiffs given that the trial date is set for October 13, 2004. This case has been pending for almost five years and absent extraordinary and unforeseen circumstances, the trial date not be continued.

Defendants' motion to amend their answer to add counterclaims and parties and defendants' motion to enlarge the time to comply with Rule 26.1 and to extend the discovery deadline are hereby denied.

Plaintiffs' motion for sanctions is hereby denied at this time with leave granted to refile the motion if warranted. Defendants are warned that filing groundless motions, taking actions primarily for delay or harassment, and attempts to unreasonably expand or delay the proceeding may result in the imposition of sanctions including, but not limited to, the striking of their counterclaim, the striking of their answer, entering of a default against them, and an award of additional attorneys' fees and costs to plaintiff.

Defendants delivered a copy of their disclosure statement to the Court. Defendants are advised that disclosure statements are neither filed with the clerk or copied to the court.

APPENDIX K

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

JAY GROSSMAN and EUDICE GROSSMAN, husband and wife,
Plaintiffs,

vs.

ROBERT MICHAEL DAVIDSON and VANESSA DAVIDSON, a.k.a. VANESSA E. KOMAR, husband and wife,
Defendants.

No. 333954

MOTION TO AMEND DEFENDANTS' ANSWER, TO ADD COUNTERCLAIMS, AND ADD PARTIES

(Assigned to Judge Jane L. Eikleberry)

Pursuant to Rule 15(a), Ariz. R. Civ. P., the Defendants move this Court for an Order to Amend the Answer to First Amended Complaint and Counterclaim. The Defendants wish to add counterclaims, with the permission of this Court, under Rule 13(e), Ariz. R. Civ. P., which have matured or been acquired by the defendants, consequent to the dismissal of U.S. District Court Case #03-CV-110-TUC-FRZ under the doctrine of Younger abstention. The Defendants wish to also add parties under Rule 19(a), Ariz. R. Civ. P.

MEMORANDUM OF POINTS AND AUTHORITIES

The purpose of rule 15, Ariz. R.Civ. P. is to encourage permitting pleadings to be amended so as to facilitate the efficient and effective resolution of an entire controversy. While a request for leave to amend is one addressed to the discretion of the trial court, the policy of the Rule favors the liberal allowance of requests to amend. Cagle v. Carr, 101 Ariz. 225, 418 P.2d 381 (1966). Since the additional counterclaims asserted, arose out of

the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the proposed amendment should relate back to the date of the original pleading. A proposed amendment adding additional counterdefendants, will relate back if the party to be brought in by amendment, has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party. Of note, the proposed parties in Pima County Case # 333954, Jay Grossman, Eudice Grossman, Charles Ott, Gayle Petrillo, and Vivra Holdings Inc, were parties to the U.S. District Court action, Case #03-CV110-TUC-FRZ.

The statute of limitations is tolled, for all of the additional counts to this complaint, under the doctrine of fraudulent concealment, or the doctrine of continuing tort, or the doctrine of equitable tolling, or the doctrine of regulatory estoppel, or the doctrine of constitutional regulatory estoppel, or the doctrine of concerted action (conspiracy). Thee is an ongoing conspiracy to defraud, conceal fraud, and perpetuate fraud from which the Davidsons have suffered [and continue to suffer] injury to their business or property. Jay Grossman, Eudice Grossman, Charles Ott, Gayle Petrillo, and Vivra Holding Inc, are estopped from asserting the statute of limitations as a defense to this Counterclaim under the doctrine of fraudulent concealment, or the doctrine of equitable estoppel, or the doctrine of equitable tolling, or the doctrine of regulatory estoppel, or the doctrine of constitutional regulatory estopel, or the doctrine of continuing tort, or the doctrine of concerted action (conspiracy).

Under Rule 13(e), Ariz. R. Civ. Pl, a claim which either matured or was acquired by the pleader afer serving a pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading. A counterclaim may not be asserted unless it has matured at the time the answer is filed. Cochise Hotels,

Inc. v. Douglas Hotel Operating Co, 83 Ariz. 40, 316 P.2d 290 (1957).

Under the Uniform Contribution Among Tortfeasors Act, joint and several liability is preserved for true joint tortfeasors, including those "acting in concert" and those who are vicariously liable for the fault of others.

The purpose of Rule 19 (a), Ariz. R. Civ. P., is to insure the joinder of all interested parties in a single action and avoid a multiplicity of litigation. Arizona Title Ins. & Trust Co. v. Kelley, 11 Ariz. App. 254, 463 P.2d 838 (1970).

CONCLUSION

In his dismissal with prejudice of the Davidsons' federal cause of action on November 24th, 2003, (U.S. District Court Case # 03-CV-110-TUC-FRZ), Trial Judge Frank R. Zapata stated,

> *"Plaintiffs [the Davidsons] have an adequate state forum in which to pursue the issues presented."*

The Davidsons, therefore, pray for this Court to grant their Motion to Amend Defendants' Answer to Add Counterclaims, and Add Parties.

RESPECTFULLY SUBMITTED, on this 26th Day of February, 2004,

By /s Robert M. Davidson /s Vanessa E. Komar
Robert M. Davidson, Defendant/Counterclaimant, Pro Se
& Vanessa E. Komar, Defendant/Counterclaimant

APPENDIX L

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Robert M. Davidson, Vanessa E. Komar, Plaintiffs, vs.	)	No. CV 03-580-TUC-FRZ
	)	**ORDER**
Michael J. Meehan; Quarles & Brady Streich Lang, Defendants	)	(Filed Feb. 2, 2004)

The present action commenced with the filing of Plaintiffs' Original Complaint & Application for Injunctive Relief against Defendants Michael J. Meehan and Quarles & Brady Streich Lang. The pleading alleges, inter alia that "[t]he Arizona state courts...have effectively stripped the Davidsons of their former attorney of record...without Due Process or Equal Protection, a violation of the Contract Clause, Takings Clause, and 14th Amendment of the U.S. Constitution."[1]

Plaintiffs' claims appear to arise from a state court ruling granting a motion to withdraw as attorney of record in state court proceedings, filed by Defendant Meehan, who had been retained to represent Plaintiffs in the state court action. Plaintiffs' complaint refers repeatedly to facts and allegations arising out of state court proceedings and a previously filed district court action, which was dismissed on November 23, 2003, four days after the filing of this action on November 20, 2003, in which Plaintiffs had similarly

[1] Plaintiffs' Original Complaint & Application for Injunctive Relief, Page 5, ¶ 24.

moved for injunctive relief.

Defendants filed a Motion to Dismiss in response to Plaintiffs' Original Complaint & Application for Injunctive Relief on December 22, 2004, now before the Court for consideration.

Defendants move the court to dismiss the present case based on their contention that "thee is no Constitutional right to counsel in civil case" and thus, "...original subject matter jurisdiction for this case is not present." Defendants conclude that "[a]s a result, this Court cannot retain supplemental jurisdiction over plaintiffs' state law based claims and thus, the entire case should be dismissed."

Plaintiffs filed their Objection to Motion to Dismiss in response to Defendants' motion, contending that they "sought relief for this irrevocable injury in their Motion for Preliminary Injunctive Relief in U.S. District court Case 03CV-110 TUC-FRZ...presently on appeal to the 9th Circuit Court of Appeals..."

Defendants' motion to dismiss addresses Plaintiffs' cause of action on the merits of the claims asserted, arguing that Plaintiffs have failed to allege the infringement of a constitutionally protected right, specifically a constitutional right to counsel in a civil case, and therefore, there is no basis for federal subject matter jurisdiction. The Court finds however, that Plaintiffs' cause of action has not been brought properly before this Court.

The Court dismissed Plaintiffs' previous action by Court order and judgment, filed November 24, 2003, under the doctrine of abstention pursuant to Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746 (1971), in which Plaintiffs moved for injunctive relief, alleging:

> Plaintiffs (the Davidsons) will suffer irreparable injury if Pima County Superior Court Case #

> 333954 proceeds to trial prior to final judgment upon the merits of the federal cause of action (Case # 03CV-110-TUC-FRZ) *from which it arises.* PIMA County Superior Court Case # 333954 *arises from* the same nucleus of operative facts alleged by the Davidsons in US District Court Case #03CV 110-TUC-FRZ.

In dismissing the previous action, the Court found that "[a]lthough Plaintiffs' initial filings were incomprehensible, it is clear to the Court that this action, in its entirety, must be dismissed based on the doctrine of abstention which precludes federal court interference with pending state judicial proceedings."

The Court further held that "[I]t is evident, based on Plaintiffs' admissions and requests for relief, as set forth in their motion for preliminary injuction, that this action was filed in federal court, on the premise of supplemental jurisdiction and federal question, to circumvent the ongoing state court proceedings, an abuse of federal judicial resources." The Court further explained that it "need not address the principles of judicial estoppel which also preclude the filing of this action in federal court" and that "[I]t is clear that this Court lacks jurisdiction over the matters asserted in this federal action and the relief requested by Plaintiffs in their motion for injunctive relief."

The Court concluded that Plaintiffs have an adequate state forum in which to pursue the issues presented. Plaintiffs filed a notice of appeal.

In the present action, Plaintiffs appear to be attempting to raise issues arising from the same cause of action and events that originated in the Arizona state courts. Plaintiffs' Original Complaint & Application for Injunctive Relief fails to comply with the requirements of

Rule 8(a)(2), which requires a complaint to include only "a short and plain statement of the claim," and Rule 9(b), which requires that "[I]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." These requirements were set forth by Court order in the previous action, CV 03-110-TUC-FRZ, along with the warning that "[a]lthough the pleadings of pro se litigants are construed liberally, pro se litigants are nevertheless bound by the federal and local rules of procedure." *See* Ghazali v. Moran, 46 F.3d 52, 54 (9th Cir. 1995). Plaintiffs' Original Complaint & Application for Injunctive Relief includes, but is not limited to, the following allegations:

> Opposing counsel in Pima County Case 333954 inappropriately aligned their interests with those of Mr. Meehan and Q&BSL during the Davidsons' appellate action to the Arizona court of Appeals as is amply demonstrated by their Answer Brief and Opposition to Petition for Review.
>
> The *possibility* of a prior association between any of the counsel of the firm Quarles & Brady LLP [in any state or federal jurisdiction] and any of the named defendants [or their Counsel] in U.S. District Court Case # 03CV-110-TUC-FRZ, is of grave concern to the Davidsons. The Davidsons pray for this court to allow discovery on this question. Such a question is readily subject to discovery, *assuming that any records documenting such an association have not been destroyed.* This is particularly relevant at this time because a number of the named corporate defendants [Vivra Inc, Magellan Specialty Health Inc, Allied specialty Care Services Inc, and i-Health Technologies Inc] in Case # 03CV-110-TUC-FRZ are presently in the process of disposing of their

assets [and records?] in a Chapter 11 Bankruptcy proceeding filed on March 11, 2003, in the U.S. Bankruptcy Court, Southern District of New York [In Re: Magellan Health Services Inc., Case No. 03-40515 (PCB), Jointly Administered]. Case # 03CV-110-TUC-FRZ is presently stayed by the filing for Automatic Stay under the Bankruptcy Code.

As of the filing of this complaint, Mr. Meehan appear no longer to be an associate of the law firm Quarles & Brady Streich Lang. According to the State Bar of Arizona Member Finder, Mr. Meehan *now* works for the law firm, The Law Offices of Michael J. Meehan, and he appears to *now* no longer be an associate of Quarles & Brady Streich Lang. Thus, Mr. Meehan is an attorney who has moved between law firms, *frequently*. The plaintiffs will produce evidence at trial that this movement between law firms [during Mr. Meehan's attorney-client relationship with the Davidsons] inured to detriment of his clients (the Davidsons) in Pima County Case #333954, in more ways than one. This movement between law firms was not part of the benefit bargained-for when the Davidsons retained Mr. Meehan as their legal counsel in Pima County Case #333954.[2]

As evidence by Plaintiffs' Exhibits in Support of Objection to Motion to Dismiss, this case centers around the state court controversies the Plaintiffs tried to raise in their previous federal action. The Court again, finding that Plaintiffs have an adequate state forum in which to pursue the issues presented, invokes the doctrine of

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[2] Plaintiffs' Original Complaint & Application for Injunctive Relief, ¶¶ 39, 40, and 41.

abstention pursuant to Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746 (1971), which "espouse[s] a strong federal policy against federal-court interference with pending state judicial proceedings." H.C. ex rel. Gordon v. Koppel, 203 F.3d 610, 613 (9th Cir. 2000) (quoting Middlesex County Ethics Committee v. Garden State Bar Ass'n., 457 U.S. 423, 431, 102 S.CT. 2515, 2521 (1982). The Court does not find extraordinary circumstances to intercede in the ongoing state court proceedings in which Plaintiffs have adequate opportunity to litigate any alleged federal claims. See Id.

Notwithstanding this finding, as Defendants assert, "it is well-established that there is generally no constitutional right to counsel in civil cases." United State v. Sardone, 94 F.3d 1233, 1236 (9th Cir. 1996)(citing Hedges v. Resoluntion Trust Corp., 32 F.3d 1360, 1363 (9th Cir. 1994), cert. Denied, 514 U.S. 1082, 115 S.Ct. 1792 (1995)).

Based on the foregoing,

IT IS HEREBY ORDERED that this case is **DISMISSED** with all parties to bear their own costs.

Judgment shall be entered accordingly.

DATED this 30th day of January, 2004.

/s FRANK R. ZAPATA
United States District Judge

APPENDIX M

COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

MANDATE
2 CA-CV 2002-0051
Department B, Pima County
Cause No. 333954
(Filed Nov. 26, 2003)

RE: GROSSMAN v. DAVIDSON

To: The Superior Court of Pima County and the Hon. Jane L. Eikleberry, Judge, in relation to Cause No. 333954.

This cause was brought before Division Two of the Arizona Court of Appeals in the manner prescribed by law. This court rendered its Memorandum Decision and it was filed on February 27, 2003.

No Motion for Reconsideration was filed and the time for filing such has expired.

A Petition for Review was filed and DENIED by Order of the Arizona Supreme Court.

PLAINTIFFS/APPELLEES are granted attorney's fees on appeal in the amount of six Thousand Seven Hundred Sixty-Seven and 50/100 Dollars ($6,767.50) and granted costs on appeal in the amount of Two Hundred Eleven and 01/100 Dollars ($211.01) by the Arizona Court of Appeals, Division Two.

NOW THEREFORE, YOU ARE COMMANDED to conduct such proceedings as required to comply with the Memorandum Decision of this Court, a copy of which is attached Hereto.

I, Jeffrey P. Handler, Clerk of the Court of Appeals, Division Two, hereby certify the attachment to be a full and accurate copy of the Memorandum Decision filed in this cause on February 27, 2003.

IN WITNESS WHEREOF, I hereunto set my hand and affix the official seal of the Arizona Court of Appeals, Division Two, on November 26, 2003.

APPENDIX N

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Robert M. Davidson, Vanessa E. Komar, Plaintiffs	)	No. CV 03-110-TUC-FRZ
vs.	)	
	)	**ORDER**
Vivra Inc, et al., Defendants	)	
	)	(Filed Nov. 24, 2003)

Before the Court for consideration is "Plaintiffs' Motion for Preliminary Injunctive Relief by this Court," filed October 21, 2003. Filed in response is "Defendants Jay and Eudice Grossman's Opposition to Plaintiffs' Motion for Preliminary Injunctive Relief."

Procedural History

Plaintiffs Robert M. Davidson and Vanessa E. Komar, proceeding pro se, filed "Plaintiff's Original Complaint" on February 19, 2003, against 22 named corporate and individual Defendants. The 191 page original complaint alleged 21 counts.

On March 11, 2003, Plaintiffs filed a 144 page RICO Case Statement, with several exhibits attached.

On April 30, 2003, Plaintiffs filed a 328 page First Amended Complaint, against the same 22 named Defendants, alleging 17 separate counts.

On June 6, 2003, Defendants Grossman appeared and filed Defendants Jay and Eudice Grossman's Motion to Dismiss Pursuant to Rule 8, Federal Rules of Civil Procedure."

On July 1, 2003, the Court granted Defendants Jay and Eudice Grossman's Motion to Dismiss Pursuant to Rule 8 based on the Court's finding "that the prolixity of the First Amended Complaint renders the pleading incomprehensible."

This matter was also stayed pursuant to the Notice of filing of Bankruptcy Petition and of the Automatic Stay filed by Defendants Vivra, Inc., Magellan Specialty Health, Inc. And Allied Specialty Care Services, LLC.

Plaintiffs were granted leave to file a Second Amended Complaint upon the lifting of the automatic stay in compliance with the pleading requirements of the Federal Rules of Civil Procedure and in accordance with the provisions of the Court's Order, specifically Rule 8(a)(2), which requires a complaint to include only "a short and plain statement of the claim," and Rule 9(b), which requires that "[I]n all averments of fraud or mistake, the circumstances constituting the fraud or mistake shall be stated with particularity."

Plaintiffs were warned that "[a]lthough the pleadings of pro se litigants are construed liberally, pro se litigants are nevertheless bound by the federal and local rules of procedure. See Ghazali v. Moran, 46 F.3d 52, 54 (9th Cir. 1995)."

Discussion

Although this cause of action is still under the automatic stay provision pursuant to the filing of a bankruptcy provision, Plaintiffs filed the present motion seeking injunctive relief.

There is no operative complaint before the Court.

Plaintiffs' motion seeks "preliminary injunctive relief from this Court in the form of:"

> (a) an Order by this Court for a Stay of Pima County Superior Court Case #333954, pending final adjudication of the federal cause of action (Case #03-110) from which it arises,
>
> (b) an Order by this Court for a Stay of the award of Costs [$211.01] and Attorney's Fees [$6,767.50] to the Grossmans in Arizona Court of Appeals Case #2 CA-CV 02-0051, pending final adjudication of the federal cause of action (Case

> #03-CV 110) from which it arises, and
> (c) an Order by this Court for a Stay of the award of Costs [$82.00] and Attorney's Fees [$1,710.00] to the Grossmans in Arizona Supreme Court Case #CV-03-0148-PR, pending final adjudication of the federal cause of action (Case #03-CV 110) from which it arises, and
> (d) an Order for any other relief this Court deems appropriate.

Plaintiffs base their argument in their motion for injunctive relief on the following:

> Plaintiffs (the Davidsons) will suffer irreparable injury if Pima County Superior Court Case # 333954 proceeds to trial prior to final judgment upon the merits of the federal cause of action (Case # 03CV-110-TUC-FRZ) *from which it arises.* PIMA County Superior Court Case # 333954 *arises from* the same nucleus of operative facts alleged by the Davidsons in US District Court Case # 03CV 110-TUC-FRZ. There is a distinct risk of issue preclusion or claim preclusion, if Pima County Superior Court Case # 333954 proceeds to trial prior to the final judgment upon the merits of 03CV-110-TUC-FRZ.

Although Plaintiffs' initial filings were incomprehensible, it is clear to the court that this action, in its entirety, must be dismissed based on the doctrine of abstention which precludes federal court interference with pending state judicial procedings. It is evident, based on Plaintiffs' admissions and requests for relief, as set forth in their motion for preliminary injunction, that this action was filed in federal court, on the premise of supplemental jurisdiction and federal question, to circumvent the ongoing state court proceedings, an abuse

of federal judicial resources.

It is clear that this Court lacks jurisdiction over the matters asserted in this federal action and the relief requested by the Plaintiffs in their motion for injunctive relief. The Court need not address the principles of judicial estoppel which also preclude the filing of this action in federal court.

The Court thereby invokes the doctrine of abstention pursuant to Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746 (1971), in which the Supreme Court "espouse[d] a strong federal policy against federal-court interference with pending state judicial proceedings." H.C. v. Koppel, 203 F.3d 610, 613 (9th Cir. 2000) (quoting Middlesex County Ethics Committee v. Garden State Bar Ass'n., 457 U.S. 423, 431, 102 S.CT. 2515, 2521 (1982)). "Absent extraordinary circumstances, Younger abstention is required if the state proceedings are (1) ongoing, (2) implicate important state interests, and (3) provide the plaintiff an adequate opportunity to litigate federal claims." Id.

Plaintiffs have an adequate state forum in which to pursue the issues presented.

Based on the foregoing,

IT IS HEREBY ORDERED that this case is **DISMISSED** with all parties to bear their own costs.

IT IS FURTHER ORDERED that all other pending matters are **DENIED** as moot.

There shall be no further filings in this action.

DATED this 20th day of November, 2003.

/s Frank R. Zapata
FRANK R. ZAPATA
United States District Judge

APPENDIX O

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Civil Action for Compensatory, Special, And Punitive Damages Under 28 USC Section 1331 and 28 USC Section 1367 for Breach of Fiduciary Duty, Professional Negligence, and Legal Malpractice

Case No. CIV 03-580 TUC JMR

PLAINTIFFS' ORIGINAL COMPLAINT & APPLICATION FOR INJUNCTIVE RELIEF
(Filed Nov. 20, 2003)

Robert M. Davidson;

Vanessa E. Komar;

Plaintiffs

vs

Jury Demand

Michael J. Meehan;

Quarles & Brady Striech Lang;

Defendants

(a) Stay this lawsuit, *pending final adjudication upon the merits of U.S. District Court Case # 03CV-110-TUC-FRZ, the federal cause of action from which Pima County Superior Court Case 333954 arises.*
(b) Enter judgment for plaintiffs and award the plaintiffs $15MM in compensatory and $60MM in punitive damages, against the defendants and each of them and in favor of the plaintiffs.
(c) Award cost of court.
(d) Award actual damages (including damages for personal injury and economic injury, the full extent of which is not presently known to the plaintiffs), consequential damages, Special damages (as described, in part, above, the full extent of which is not presently known to the plaintiffs), punitive damages, interest, court costs and attorney fees from the defendants.
(e) Grant any other relief it deems appropriate.

Respectfully submitted,

/s Robert M. Davidson /s Vanessa E. Komar

By: _____

Robert M. Davidson, Pro Se, and
Vanessa E. Komar, Pro Se

APPENDIX P

SUPREME COURT OF ARIZONA

JAY GROSSMAN and EUDICE GROSSMAN, husband and wife,	) Arizona Supreme Court) No. CV-03-0148-PR) Court of Appeals) Division Two
Plaintiff/Appellee,	) No. 2 CA-CV 02-0051
v.	) Pima County Superior) Court
ROBERT MICHAEL DAVIDSON	) No. 333954
Defendant/Appellant	) **ORDER**) (Filed Sep. 15, 2003)

On August 8, 2003, this Court issued a minute letter granting Attorneys' Fees to Appellees Jay Grossman and Eudice Grossman. A "Plaintiffs-Appellees' Verified Itemized Statement of Costs and Attorney's Fees" was filed on August 22, 2002. Pursuant to Rule 21, Rules of Civil Appellate Procedure and this Court's minute letter of August 8, 2003, and the Clerk having been authorized to tax costs and attorneys fees, and no objection having been received from Appellant Robert Michael Davidson.

IT IS ORDERED granting Appellees Jay Grossman and Eudice Grossman attorney's fees in the amount of One Thousand Seven Hundred Ten and 00/100 Dollars ($1,710.00) and costs in the amount of Eighty-Two and 00/100 Dollars ($82.00).

DATED this 15th day of September, 2003.

/s NOEL K. DESSAINT
Clerk of the Court

APPENDIX Q

Commission on Appellate
Court Appointments

News Release

FOR IMMEDIATE RELEASE
March 28, 2003

10 Applicants Being Considered For Arizona Court of Appeals

The public is asked for comments on 10 applicants for an opening on Division Two of the Arizona Court of Appeals. The vacancy was created by the retirement of Judge William Druke.

Beth C. Beckmann, Christina M. Cabanillas, Barry M. Corey, Peter J. Eckerstrom, Jean K. Gage, Elliot A. Glicksman, Stephen H. Lesher, Lawrence McDonough, Grace McIlvain and Michael J. Meehan are being considered.

The Commission on Appellate Court Appointments will review the applications and hear comments at a public meeting on April 14. The meeting will be held at the Four Points Sheraton in Tucson, 1900 E. Speedway Boulevard, starting at 10:00 a.m. Citizens may address the commission at that time or send written comments to 1501 W. Washington, Suite 227, Phoenix, AZ, 85007 or to: jnc@supreme.sp.state.az.us. Comments must be received by April 10 to be considered. Anonymous comments cannot be considered.

At the April 1 meeting the commission will decide which applicants will be interviewed for the opening. The selected applicants will be interviewed on April 28. After the interviews the commission will recommend at least three nominees to Governor Janet Napolitano, who will appoint the new judge.

APPENDIX R

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JAY GROSSMAN and EUDICE GROSSMAN, husband and wife, Plaintiffs/Appellees,	) 2 CA-CV 2002-0051) DEPARTMENT B)
v.	) **MEMORANDUM**) **DECISION**) Not for Publication
ROBERT MICHAEL DAVIDSON, Defendant/Appellant	) Rule 28, Rules of) Civil Appellate) Procedure

(Filed Feb. 27, 2003)

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY
Cause No. 333954
Honorable Jane L. Eikleberry, Judge

APPEAL DISMISSED

DRUKE, Presiding Judge.

¶1 Jay and Eudice Grossman sued Robert and Vanessa Davidson for defamation, slander, and other related counts. Four months before trial, the Davidsons' attorney moved to withdraw as counsel and to continue the trial. The Davidsons did not respond to the motion and the Grossmans had no objection to it. On January 11, 2002, the trial court entered an order granting the motion to withdraw and rescheduled the trial. On February 13, Robert Davidson filed a notice of appeal "from the order made and entered in this action on the 11th day of January, 2002."[1] For the reasons that follow, we dismiss the appeal for lack of jurisdiction.

[1]Both the notice of appeal and the opening brief state that Robert Davidson is "representing" the defendants. He may represent himself, but because he is not an attorney admitted to the practice of law, he cannot represent his wife. *See Haberkorn v. Sears, Roebuck & Co.*, 5 Ariz. App. 397, 427 P.2d 378 (1967).

¶2 In a civil case, "the right to appeal is not absolute but exists only by statute." *Southern Cal. Edison Co. v. Pebody W. Coal Co.*, 194 Ariz. 47, ¶ 16, 977 P.2d 769, ¶ 16 (1999); *see also In re Pima County Juvenile Action No. S-933*, 135 Ariz. 278, 660 P.2d 1205 (1982) (substantive right to appeal created only by consitution or statute). Civil appeals are governed by A.R.S. § 12-2101, which limits this court's jurisdiction to those matters set forth in the statute. *See* Ariz. Const. Art. VI § 9; A.R.S. § 12-120.21; *Truck Ins. Exch. v. State Compensation Fund*, 138 Ariz. 116, 117, 673 P.2d 314, 315 (App. 1983) ("[T]he right to appeal and orders which are reviewable on appeal are strictly statutory."); *Campbell v. Arnold*, 121 Ariz. 370, 590 P.2d 909 (1979) (court of appeals only has jurisdiction given by statute).

¶3 The Grossmans point out that the order granting counsel's motion to withdraw does not come "within any of the categories of appealable orders." In response, Davidson asserts that this appeal comes within § 12-2101 (D), which permits an appeal "[f]rom any order affecting a substantial right made to any action when the order in effect determines the action and prevents judgment from which an appeal might be taken." He argues that "[t]he substantial rights in this appeal are the Constitutionally-protected rights to Due Process, Equal Protection, and right to Contract" and that "[t]he order appealed from, in effect, determine[d] the action." (Emphasis omitted.)

¶4 Although we might agree that the rights to which Davidson refers are substantial, we cannot agree that the trial court's order permitting his counsel to withdraw determined the action that the Grossmans filed against him. That "order did not finally dispose of the case, leaving no question open for judicial determination." *Eaton v. Unified Sch. Dist. No. 1 of Pima County*, 122

Ariz. 391, 392, 595 P.2d 183, 184 (App. 1979). The order simply allowed Davidson's attorney to withdraw his representation and continued the date for a trial on the merits. The order was, in fact, interlocutory, this, "interim or temporary, not constituting a final resolution of the whole controversy." *Black's Law Dictionary* 819 (7th ed. 1999). And interlocutory orders are generally nonappealable. *See Southern Cal Edison,* 194 Ariz. 47, ¶ 16, 977 P.2d 769, ¶ 16 (legislature's express listing in § 12-2101 of appealable judgments and orders makes clear that "*most interlocutory orders...* are not appealable"); *Security Gen. Life Ins. Co. v. Superior Court,* 149 Ariz. 332, 333, 718 P.2d 985, 986 (1986) (order disqualifying counsel from representing party "is not a final order and is therefore not appealable"); *Riley, Hoggatt & Suagee, P.C. v. Riley,* 165 Ariz. 138, 796 P.2d 940 (App. 1990) (order denying counsel's motion to withdraw representation not appealable); *Eaton* (§ 12-2101(d) does not permit appeal from interlocutory order allowing case to proceed as class action). Accordingly, we conclude that the trial court's order allowing Davidson's counsel to withdraw is a nonappealable interlocutory order.

¶5 But even if we were to assume that the order is appealable, because Davidson did not file his notice of appeal until February 13, it was not filed within the thirty days required by Rule 9(a), Ariz. R. Civ. App. P., 17B A.R.S. The relevant part of Rule 9(a) states that a "notice of appeal... shall be filed with the clerk of the superior court not later than 30 days after the entry of judgment from which the appeal is taken." Rule 2(d), Ariz. R. Civ. App. P., defines "[j]udgment" as "any appealable order, whether denominated an order, a judgment, a decree, or otherwise." Thus, even if the order were appealable, we would still lack jurisdiction to review it because Davidson failed to timely file the notice of

appeal. *See Butler Products Co. v. Roush,* 145 Ariz. 32, 32, 699 P.2d 906, 906 (App. 1984) (" Appellate courts do not have jurisdiction to consider appeals which are not timely filed."); *Pima County No. S-933* (failure to file timely appeal deprives appellate court of jurisdiction).

¶6 For the foregoing reasons, we dismiss for lack of jurisdiction Davidson's appeal from the trial court's January 11 interlocutory order granting his attorney's motion to withdraw as counsel. We also grant the Grossmans costs and attorney's fees on appeal, finding, for the reasons set forth in the answering brief, that Davidson filed a frivolous appeal. Ariz. R. Civ. App. P. 25, 17B A.R.S. Costs and attorney's fees will be awarded to the Grossmans upon their compliance with Rule 21, Ariz. R. Civ. App. P.

/s WILLIAM E. DRUKE, Presiding Judge

CONCURRING:

/s PHILIP G. ESPINOSA, Chief Judge
/s JOHN PELANDER, Judge

APPENDIX S

Commissions on Appellate and Trial Court Appointments

NOTICE OF PUBLIC MEETING

The Commission on Appellate Court Appointments will meet at 10:00 a.m. on December 13, 2002, to review applications from the following persons for a vacancy on the Arizona Supreme Court: William Scott Bales, Ernest Calderon, David R. Cole, Barry M. Corey, Andrew M. Federhar, Andrew D. Hurwitz, Gregory J. Kuykendall, Michael J. Meehan, John E. Osborne, A. John Pelander III and William H. Ricker.

The public may address the commission about any of the candidates at 10:00 a.m. on December 13, 2002. Public comment will only be accepted at the 10:00 a.m. hearing.

Written comments can be sent to 1501 W. Washington, Suite 227, Phoenix, AZ 85007. Comments should arrive by December 5 to be considered. Anonymous comments cannot be considered.

The meeting is open to the public. It will be held in Phoenix at the Arizona State Courts Building, 1501 West Washington Street, Conference Room 345. A copy of the agenda may be obtained from the Human Resources Division, Administrative Office of the Courts, 1501 West Washington, Suite 227, Phoenix, Arizona, 85007, or by calling (602) 542-9311.

After taking public comment and reviewing the applications, the Commission will conduct a public vote on the candidates to be interviewed for the vacant position.

APPENDIX T

COMMISSION ON
APPELLATE COURT APPOINTMENTS

AGENDA

May 10, 2002 — Phoenix, Arizona

8:30 a.m. Call to Order...Chief Justice Charles E. Jones
8:30 a.m. Call for Public Comment...Chief Justice Jones

Disqualifications and Disclosures...All Members

8:45 a.m. Interviews of Applicants:

8:45 Sheldon H. Wisberg
9:30 Michael J. Meehan
10:15 -Break-
10:30 Michael D. Ryan
11:15 J. William Brammer, Jr.

12:00 p.m. Lunch
12:45 p.m. Interviews Resume:

12:45 Cecil B. Patterson, Jr.
1:30 Michael C. Nelson
2:15 -Break-
2:30 A. John Pelander III
3:15 Andrew D. Hurwitz

4:00 p.m. Discussion of Applicants and Interviews
Note: This discussion may include one or more executive sessions, if necessary for frank discussion of the candidates' qualifications, upon motion and approval by two-thirds of the members in attendance.
Selection of Nominees
Note: All voting will be conducted in public session in accordance with Rule 9.e.5., Uniform Rules of Procedure for Commissions on Appellate and Trial Court Appointments.

APPENDIX U

Document Display **April 15, 2002**
Section: City State **Page: 4C**
Tucson Citizen

7 Tucsonans up for high court seat

Staff
Tucson Citizen

36 people apply for 2 vacancies on Pima's Superior Court
Citizen Staff Report

Seven Tucsonans are being considered for an opening on Arizona's Supreme Court.

The opening will be created by the retirement of Thomas Zlaket, a Tucsonan who plans to step down April 30.

The Tucsonans among the 15 applicants are:

Robert L. Beal Jr., J. William Brammer Jr., Barry M. Corey, Stephen H. Lesher, Michael J. Meehan, Clark W. Munger and A. John Pelander.

A commission will hear comments on the Supreme Court applicants at a public meeting beginning at 2 p.m. April 24 in Phoenix at the Arizona State Courts Building, 1501 W. Washington St., Conference Room 345.

Written comments also will be accepted until Friday. They should be mailed to the state courts building, Suite 227, Phoenix, 85007. Anonymous comments will not be considered.

Applicants will be interviewed May 10.

Public comment also is being sought on 36 applicants for two vacancies on the Pima County superior Court bench.

APPENDIX V

THE LAW FIRM OF
KARP, HEURLIN & WEISS, P.C.
3060 NORTH SWAN ROAD, SUITE 100
TUCSON, ARIZONA 85712-1225
TEL (520) 325-4200
FAX (520) 325-4224
Bruce R. Heurlin, PCC# 25508
Attorneys for Jay Grossman and Eudice Grossman

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

JAY GROSSMAN and EUDICE GROSSMAN, husband and wife,
Plaintiffs,
vs.
ROBERT MICHAEL DAVIDSON and VANESSA DAVIDSON, a.k.a. VANESSA E. KOMAR, husband and wife,
Defendants.

No. C 333954

ORDER

(Judge Jane L. Eikleberry)

ROBERT MICHAEL DAVIDSON and VANESSA KOMAR,
Defendants/Counterclaimants,
vs.
JAY GROSSMAN and EUDICE GROSSMAN,
Plaintiffs/Counterdefendants.

Upon Quarles & Brady Streich Lang's Motion to Withdraw as Counsel of Rcord and to Continue Trial, and good cause appearing therefor,

IT IS HEREBY ORDERED that the motion to withdraw as counsel of record is GRANTED.

IT IS HEREBY ORDERED that ROBERT DAVIDSON and VANESSA KOMAR are required to have new counsel file a notice of appearance by _ 8 Feb 2002

IT IS HEREBY FURTHER ORDERED that the March 26, 2002, trial date is vacated and reset to 29 May 2002, at 9:00 a.m. and that the pretrial deadlines are continued as follows:

	From	To
Status conference	1/28/02	4-1-02
Disclosure/discovery	1/25/02	See Trial Notice
Dispositive motions	1/25/02	7-14-20
Motions in Limine	2/11/02	"
Responses to Motions in Limine	2/26/02	"
Joint Pretrial Statement	3/07/02	"
Meet with Clerk re: Exhibits, week of	3/17/02	"
Jury Instructions/Voir Dire	3/22/02	5-24-02
Trial	3/26/02	5-29-02

Dated: January 11, 2002.

/s Jane L. Eikleberry
Judge of the Superior Court

Conformed copy mailed/faxed
_____, 2001, to:

Michael J. Meehan
Shannon L. Giles
Quarles & Brady/Streich Lang, P.A.
1 S. Church Avenue #1700
Tucson, AZ 85701-1621
Attorney for Robert Michael Davidson and
Vanessa Davidson aka Vanessa E. Komar

Dr. Robert Davidson and Vanessa Komar
2427 East First Stret
Tucson, AZ 85719

APPENDIX VV

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF PIMA

JAY GROSSMAN and EUDICE GROSSMAN, husband and wife,
Plaintiffs,
vs.
ROBERT MICHAEL DAVIDSON and VANESSA DAVIDSON, a.k.a. VANESSA E. KOMAR, husband and wife,
Defendants

Case No. 333954

NOTICE OF CHANGE OF ADDRESS

(Judge Jane L. Eikleberry)

ROBERT MICHAEL DAVIDSON and VANESSA KOMAR, Counterclaimants,
vs.
JAY GROSSMAN and EUDICE GROSSMAN, Counterdefendants

ROBERT MICHAEL DAVIDSON, representing the Defendants/Counterclaimants without an attorney, hereby informs the Court that his address has changed and all further filings, documents and other mailings relating to this matter should be sent to him at the following address:

P.O. Box 1785, Kilgore, TX 75663-1785

DATED this 5th day of February, 2002.

/s Robert Michael Davidson
/s Vanessa Komar

APPENDIX VVV

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF PIMA

JAY GROSSMAN and EUDICE GROSSMAN, husband and wife,
Plaintiffs,
vs.
ROBERT MICHAEL DAVIDSON and VANESSA DAVIDSON, a.k.a. VANESSA E. KOMAR, husband and wife,
Defendants

Case No. 333954

NOTICE OF APPEARANCE

(Judge Jane L. Eikleberry)

ROBERT MICHAEL DAVIDSON and VANESSA KOMAR, Counterclaimants,
vs.
JAY GROSSMAN and EUDICE GROSSMAN, Counterdefendants

PLEASE TAKE NOTICE that ROBERT MICHAEL DAVIDSON, representing the Defendants/Counterclaimants without an attorney, hereby makes his appearance in this action and hereby requests that all further filings, documents and other mailings relating to this matter and Defendants/Counterclaimants be sent to him at the following address:

P.O. Box 1785, Kilgore, TX 75663-1785

DATED this 5th day of February, 2002.

/s Robert Michael Davidson
/s Vanessa Komar

APPENDIX VVVV

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF PIMA

JAY GROSSMAN and EUDICE GROSSMAN, husband and wife,
Plaintiffs,
vs.
ROBERT MICHAEL DAVIDSON and VANESSA DAVIDSON, a.k.a. VANESSA E. KOMAR, husband and wife,
Defendants

Case No. 333954

NOTICE OF APPEAL

(Judge Jane L. Eikleberry)

ROBERT MICHAEL DAVIDSON and VANESSA KOMAR, Counterclaimants,
vs.
JAY GROSSMAN and EUDICE GROSSMAN, Counterdefendants

Notice is hereby given that ROBERT MICHAEL DAVIDSON, representing the Defendants/counterclaimants without an attorney, appeals to the Court of Appeals of the State of Arizona from the order made and entered in this action on the 11th day of January, 2002. Specifically, the order "that the motion [by Quarles & Brady Streich Lang LLP] to withdraw as counsel of record is granted" is appealed.

DATED this 11th day of February, 2002.

/s Robert Michael Davidson

APPENDIX W

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	
	)	Administrative
ELECTION OF CHIEF JUSTICE	)	Order No. 2001-
AND VICE CHIEF JUSTICE	)	-119
	)	

The terms of Justice Thomas A. Zlaket as Chief Justice and Justice Charles E. Jones as Vice Chief Justice expire on January 7, 2002. Pursuant to Article VI, § 3 of the Arizona Constitution, the members of the Court met at a special administrative conference on February 15, 2001 to elect the Chief Justice and Vice Chief Justice for the term beginning January 8, 2002. Therefore,

IT IS ORDERED that the term of the Honorable Thomas A. Zlaket as Chief Justice shall expire at midnight on Monday, January 7, 2002.

IT IS FURTHER ORDERED that the Honorable Charles E. Jones shall serve as Chief Justice of the Arizona Supreme Court for a five-year term beginning at 12:01 a.m. on Tuesday, January 8, 2002.

IT IS FURTHER ORDERED that the Honorable Ruth V. McGregor shall serve as Vice Chief Justice of the Arizona Supreme Court for a five-year term beginning at 12:01 a.m. on Tuesday, January 8, 2002.

Dated this 19th day of December, 2001.

THOMAS A. ZLAKET
Chief Justice

APPENDIX X

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

JAY GROSSMAN and EUDICE GROSSMAN, husband and wife,
Plaintiffs,
vs.
ROBERT MICHAEL DAVIDSON and VANESSA DAVIDSON, a.k.a. VANESSA E. KOMAR, husband and wife,
Defendants.
ROBERT MICHAEL DAVIDSON and VANESSA KOMAR,
Counterclaimants,
vs.
JAY GROSSMAN and EUDICE GROSSMAN,
Counterdefendants.

No. 333954

MOTION TO WITHDRAW AS COUNSEL OF RECORD AND TO CONTINUE TRIAL

Assigned to the Honorable Jane L. Eikleberry

Pursuant to Rule 5.1(a)(2)(B), Ariz. R. Civ. P., Quarles & Brady Streich Lang LLP ("Q&BSL") respectfully moves the Court for an order permitting it to withdraw as counsel for Robert Davidson and Vanessa Komar in this matter. Because the application does not contain the written approval of the clients, the applicable rule requires that a motion be brought including the

clients' names, addresses and telephone number. The clients names, addresses and telephone number are as follows:

> Dr. Robert Davidson and Vanessa Komar
> 2427 East First Street
> Tucson, Arizona 85719
> Telephone: (520) 318-3629

Rule 5.1(a)(2)(C) states that no attorney shall be permitted to withdraw as attorney of record after an action has been set for trial unless one of two criteria are met. *See* Rule 5.2(a)(2)(C), Ariz. R. Civ. P. Counsel respectfully submits that the second criteria, "good cause," is met under the present circumstances.

Ethical Rule 1.16 (b) of the Arizona Rules of Professional Conduct states:

> .....a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interest of the client, or if:
> (1) the client insists upon pursuing an objective that the lawyer considers repugnant or imprudent; . . .
> (6) other good cause for withdrawal exists.

The undersigned attorney has represented Dr. Robert Davidson and his wife, Vanessa Komar, in this matter since approximately October of 1999. During the representation, Dr. Davidson has insisted, and continues to insist, on pursuing objectives in this litigation that I believe to be very imprudent and contrary to the Arizona Rules of Civil Procedure, but which cannot be described more fully because they constitute privileged communications between attorney and client. In addition, communication with Dr. Davidson has been problematic in a manner that cannot be described more fully in light

of the attorney-client privilege. Dr. Davidson is now encouraging me to act in a manner that I believe is unprofessional and incompetent, while at the same time making threats of malpractice. All of these factors have resulted in a failure of communication and lack of trust which prevents Q&BSL from continuing to represent Dr. Davidson and Ms. Komar effectively in this matter.

It should also be noted that withdrawal of counsel will not have a "material adverse effect" on the clients' interests. There are almost four months remaining before the currently scheduled trial date of March 26, 2002. Discovery is at the stage of document exchange and no depositions have been taken. The clients will have ample opportunity to substitute counsel without prejudice to their case. Nevertheless, in order to give the clients every available opportunity to substitute counsel and prepare their case, counsel requests that the trial of this matter be continued, and is informed that plaintiffs do not object to such request.

The certificate of counsel required by Rule 5.1(a)(2)(B) regarding notification to the clients is attached hereto.

DATED this 17th Day of December, 2001.

QUARLES & BRADY STREICH LANG LLP
One South Church Avenue, Suite 1700
Tucson, Arizona 85701-1621

By /s Michael J. Meehan
Michael J. Meehan

APPENDIX XX

Quarles & Brady
Streich Lang LLP

One S. Church Avenue
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Tucson, Arizona 85701-1621
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Chicago (Quarles & Brady LLC)
Madison
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Naples
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Michael J. Meehan
mmeehan@quarles.com
Phone: (520)770-8701
Fax (520) 770-2208

October 17, 2001

Dr. Robert Davidson
P.O. Box 40937
Tucson, Arizona 85717

Dear Bob:

I have your two faxes of October 15th. Let me answer your question.

It would be impossible now to remove the Grossman case against you, to the United States District Court. There are no federal questions and it has been more than a year since the Complaint was filed. Thus, the question is moot.

I have not changed my earlier view that there is no RICO claim assertable on your behalf arising out of the circumstances that we are litigating in the state court.

I hope this answers your questions.

Very truly yours,

/s Michael J. Meehan

APPENDIX Y

LAW OFFICES OF
MEEHAN & ASSOCIATES
33 NORTH STONE AVENUE, SUITE 830
TUCSON, ARIZONA 85702-1671
TELEPHONE (520) 882-4487
EMAIL: mjm@mmeehan.com

January 15, 2001

Dr. Robert Davidson
Ms. Vanessa Komar
2427 E. First Street
Tucson, AZ 85719

Dear Bob and Vanessa:

Public announcements will be made soon regarding a change that I am making, and I wanted to inform you before it became public knowledge.

I have enjoyed owning my own firm for eight years. Recently I decided to return to the thing I enjoy the most, the practice of law, unencumbered by day-to-day management and administrative responsibilities. To this end, I am merging my practice with Quarles, Brady, Streich, Lang effective February 1, 2001.

The nature of my practice will be the same: solving complex business problems using litigation, mediation and arbitration, aided by technology. I will continue to represent business people in their business disputes. I will continue to represent businesses. I am also planning to place special emphasis on my appellate practice.

This change is somewhat bittersweet and the decision was not easy. I have always enjoyed having my own firm; however, I am very excited about working with this prestigious national firm and the opportunities we can afford each other. I expect to have an enhanced ability to provide as robust (or as lean) a team of lawyers and paralegals as a case requires. I expect to have technical legal expertise in areas such as patent, intellectual property and health law to augment my own developed skills and expertise. And I believe that I will bring additional commercial litigation and appellate talents to the Quarles, Brady Streich, Lang firm.

I do not expect this to affect or impair in any way my ability to continue effective representation for you.

Regards,

/s Michael J. Meehan

APPENDIX Z

Arizona Rules of Civil Procedure

Rule 5.1 Duties of Counsel

(A) Attorney of Record: Withdrawal and Substitution of Counsel.

(2) Withdrawal and Substitution. Except where provided otherwise in any local rules pertaining to domestic relations cases, no attorney shall he permitted to withdraw. or be substituted, as attorney of record in any pending action except by formal written order of the court, supported by written application setting forth the reasons therefore together with the name, residence and telephone number of the client, as follows:

(B) Where such application does not bear the written approval of the client, it shall be made by motion and shall be served upon the client and all other parties or their attorneys. The motion shall he accompanied by a certificate of the attorney making the motion that (i) the client has been notified in writing of the status of the case including the dates and times of any court hearings or trial settings, pending compliance with any existing court orders, and the possibility of sanctions, or (ii) the client cannot he located or for whatever other reason cannot be notified of the pendency of the motion and the status of the case.

(C) No attorney shall be permitted to withdraw as attorney of record after an action has been set for trial, (i) unless there shall be endorsed upon the application therefore either the signature of a substituting attorney stating that such attorney is advised of the trial date and will he prepared for trial, or the signature of the client stating that the client is advised of the trial date and has made suitable arrangements to be prepared for trial, or (ii) unless the court is satisfied for good cause shown that the attorney should be permitted to withdraw.